

OK Federal Register

Tuesday
August 30, 1983

Selected Subjects

- Administrative Practice and Procedure**
 - Soil Conservation Service
- Authority Delegations (Government Agencies)**
 - Federal Reserve System
- Biologics**
 - Food and Drug Administration
- Chemicals**
 - Environmental Protection Agency
- Color Additives**
 - Food and Drug Administration
- Conflict of Interests**
 - Air Force Department
 - Securities and Exchange Commission
- Energy Conservation**
 - Conservation and Renewable Energy Office
- Fisheries**
 - National Oceanic and Atmospheric Administration
- Government Contracts**
 - Immigration and Naturalization Service
- Government Employees**
 - Personnel Management Office
- Grant Programs—Education**
 - Education Department
- Grant Programs—Energy**
 - Conservation and Renewable Energy Office

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Agricultural Marketing Service

Medicare

Health Care Financing Administration

Motor Carriers

Interstate Commerce Commission

Natural Gas

Federal Energy Regulatory Commission

Nutrition

Food and Nutrition Service

Pesticides and Pests

Environmental Protection Agency

Reporting and Recordkeeping Requirements

Federal Communications Commission

Surface Mining

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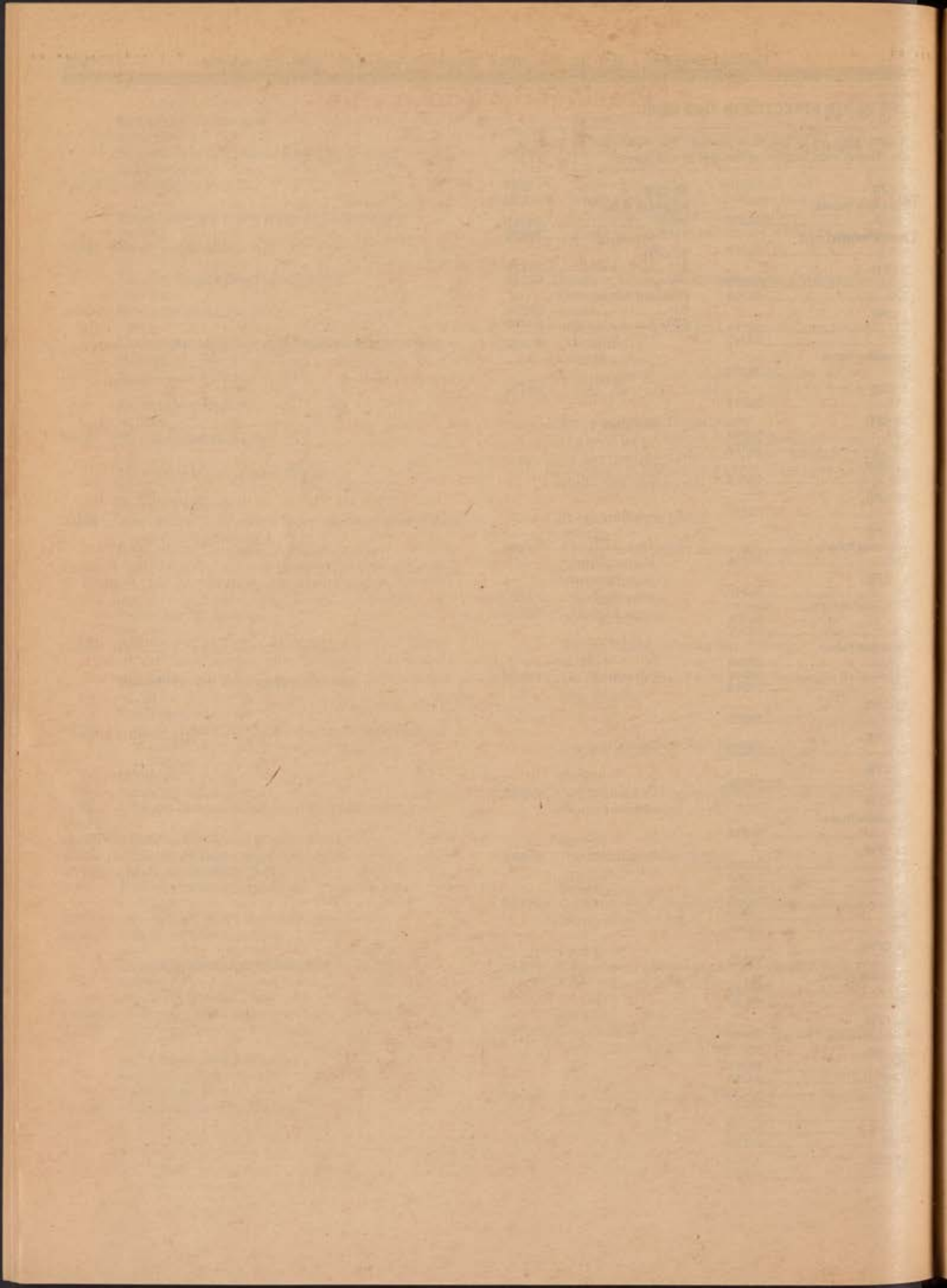
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Title 3—

Executive Order 12438 of August 23, 1983

The President

Review of Increases in Rates of Basic Pay for Employees of the Veterans' Administration

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 4107(g)(4) of title 38 of the United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Veterans' Administration, it is hereby ordered as follows:

Section 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by Section 112 of Public Law 96-330 (94 Stat. 1037) to review and disapprove increases in the rates of basic pay proposed by the Administrator of Veterans' Affairs and to provide the appropriate Committees of the Congress with a written statement of the reasons for any such disapprovals.

Sec. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Administrator of Veterans' Affairs are in the best interest of the Federal government; do not exceed the amounts authorized by Section 112; and are made only to:

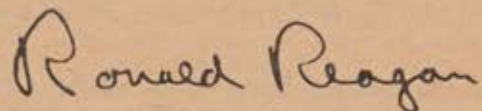
(1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

(2) Achieve adequate staffing at particular facilities; or

(3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

Sec. 3. The Administrator of Veterans' Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this Order.

Sec. 4. The Director shall provide the Administrator of Veterans' Affairs with a copy of any written statement, provided to the appropriate committees of the Congress, which sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this Order.



THE WHITE HOUSE,

August 23, 1983.

Presidential Documents

Executive Order 11631

11/15/68

Revised Instructions to the President's Commission on the Assassination of President John F. Kennedy

The Commission on the Assassination of President John F. Kennedy was established by Executive Order 11631 on November 15, 1968. The Commission's mandate is to investigate the assassination of President John F. Kennedy and to report to the President and the Congress. The Commission is composed of five members, including the President, the Vice President, and three members appointed by the President. The Commission is to conduct its investigation in a thorough and impartial manner, and to report its findings to the President and the Congress as soon as possible.

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Presidential Documents

Proclamation 5084 of August 25, 1983

National Hispanic Heritage Week, 1983

By the President of the United States of America

A Proclamation

National Hispanic Heritage Week pays tribute to a rich part of America's cultural tradition, offering all Americans a welcome opportunity to recognize the qualities and contributions of Hispanic Americans from earliest colonial times to the present. The dedication to principles of loyalty, patriotism, strong religious faith and devotion to family displayed by Hispanic Americans is basic to the American way of life.

Hispanic Americans have played an important role in the development of our rich cultural heritage and every State has benefitted from their influence. They have distinguished themselves in the arts and sciences, education, industry, government and many other areas of productive endeavor. Indeed, they are a part of all that makes America great.

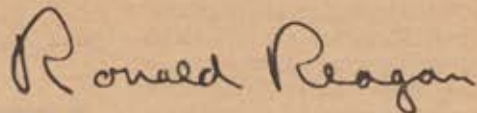
Just as their forefathers sought a dream in the New World, Hispanic Americans have realized their dreams in our great Nation and will continue to do so. Their dedication to higher purposes reflects what is best in the American spirit.

Through the years, Hispanic American citizens have risen to the call of duty in defense of liberty and freedom. Their bravery is well-known and has been demonstrated time and again, dating back to the aid rendered by General Bernardo de Galvez during the American Revolution.

In recognition of the many achievements of the Hispanic American Community, the Congress, by joint resolution approved September 17, 1968 (82 Stat. 848), authorized and requested the President to issue annually a proclamation designating the week which includes September 15 and 16 as National Hispanic Heritage Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 11, 1983, as National Hispanic Heritage Week in honor of the Hispanic peoples who have enriched our daily lives, our traditions and our national strength. In this spirit, I ask all of our citizens to reflect on the sense of brotherhood that binds us together as one people.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of Aug., in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.



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Rules and Regulations

Federal Register

Vol. 48, No. 169

Tuesday, August 30, 1983

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Personnel Management is issuing a technical amendment removing from the definition of Schedule C contained in section 213.3301 of Title 5 of the Code of Federal Regulations reference to "positions in grades GS-15 and below." This amendment is needed because Schedule C, as defined in the civil service rules (5 CFR 6.2), is not limited by grade level, and the reference to grade level incorrectly reflects OPM's authority to place positions in Schedule C.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-6000.

SUPPLEMENTARY INFORMATION: OPM's authority to except positions from the competitive service and place them in Schedule C is granted by civil service rule VI (5 CFR 6.2), which states that: "Positions of a confidential or policy-determining character shall be listed in Schedule C." This definition does not speak to grade level and does not limit OPM's authority to positions in certain grades. The authority to place positions in Schedule C is rarely used for positions above the GS-15 level because most positions at GS-16 and above are filled in the Senior Executive Service (SES), which is separate from the competitive service, or through the Executive Assignment System, which provides for noncareer executive assignments (NEA) to positions of the

type appropriate for Schedule C exception. When the regulations in 5 CFR Part 213 were recodified in July 1982, it was erroneously believed that all positions in grades GS-16 and above were filed under these two systems; and the reference to "positions in grades GS-15 and below" in 5 CFR 213.3301 was intended, not to limit OPM's authority, but only to reflect actual practice. In fact, however, a few positions exist which do not meet the criteria for inclusion in either SES or the Executive Assignment System, but which do qualify for inclusion in Schedule C. The proposed technical amendment will clarify OPM's authority to grant Schedule C exceptions for those positions.

Pursuant to sections 553(b)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists to waive the general notice of proposed rulemaking and to make this amendment effective in less than 30 days. The regulation is being made effective immediately because it does not change OPM's actual authority under civil service rule VI (5 CFR 6.2) to except positions under Schedule C, but merely removes from the regulations an inaccurate reference to the extent of that authority.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it merely updates information on authorities used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.
Office of Personnel Management.
Donald J. Devine,
Director.

PART 213—[AMENDED]

Accordingly, the U.S. Office of Personnel Management is revising 5 CFR § 213.3301, to read as follows:

§ 213.3301 Positions of a confidential or policy-determining character.

Upon specific authorization by OPM, or under the terms of an agreement with OPM, agencies may make appointments

under this section to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position authorized under this section will be assigned a number from 213.3302 to 213.3399, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218)

[FR Doc. 83-23806 Filed 8-29-83; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 330

Recruitment, Selection, and Placement (General)

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to provide for placement assistance for persons previously employed as National Guard Technicians who are eligible and applying for or receiving an annuity by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment. This action is necessary to implement the provisions of 5 U.S.C. 8337(h).

EFFECTIVE DATE: September 29, 1983.

FOR FURTHER INFORMATION CONTACT: William Bohling, Noncompetitive Staffing Branch, Staffing Group, 202-632-6000.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 8337(h) provides: (1) That a National Guard Technician who is required as a condition of employment to be a member of the National Guard or to hold a certain military grade may be eligible for disability retirement based on a disability that disqualifies the individual from membership in the National Guard or from holding the required military grade; and (2) that any individual applying for or receiving an annuity

under this provision "shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—(A) the position is located within the commuting area of the individual's former position; (B) the individual is qualified to serve in such position as determined by the head of the agency; and (C) the position is at the same grade or equivalent level as the position from which the individual was separated." The law further stipulates that a National Guard Technician may retire under 5 U.S.C. 8337(h), and receive placement consideration consistent with the statutory provisions, only if he/she has not been found to be disabled under 5 U.S.C. 8337(a).

On March 22, 1983, OPM published final regulations establishing a new Schedule A appointing authority in the excepted service covering positions filled by National Guard Technicians who are eligible for or receiving an annuity based on a disability that disqualifies them from National Guard membership or from holding a military grade required by their technician employment. Since National Guard Technicians are appointed under 32 U.S.C. 709(a), which confers no status or eligibility for movement to other positions, a special appointing authority was needed to permit their placement in other agencies. Schedule A appointing authority, under which agencies determine qualifications for their positions, was appropriate in view of the language of 5 U.S.C. 8337(h).

Interim regulations published April 15, 1983 (48 FR 16229) specified the nature of the placement assistance to be provided to National Guard Technicians. Comments on these regulations were invited for 60 days. Four comments were received: two from Federal agencies, one from a private citizen, and one from a state National Guard facility.

One Federal agency suggested that we clarify a statement contained in the "Supplementary Information" section of the interim regulations which described the conditions under which OPM would provide priority consideration to National Guard Technicians. The statement, in part, stipulates that priority consideration will be given to National Guard Technicians " * * * for any vacant position in the competitive service that agencies plan to fill through an external hire. * * * " The agency felt that this statement could be misinterpreted as including situations where an agency is planning to fill a vacant position by the reinstatement of

a former Federal employee or the transfer of a current employee from another agency. Such an interpretation would be incorrect. As Section 330.803(a)(1) of the interim regulations states, priority consideration shall be given whenever an agency " * * * plans to seek or is seeking the names of qualified candidates from a register or registers of competitive eligibles maintained by OPM or agencies with delegated examining authority." Such requests do not interfere with an agency's authority to fill a vacant position by a reinstatement or transfer action.

The remaining three commentors either individually or collectively made the following suggestions: (1) That priority placement consideration not be limited to the commuting area of the employee's former National Guard Technician position; rather, assistance should also be provided to the National Guard Technician in the commuting area of his/her current home address or within a geographic area encompassing a specific region of the country. The commentors argued that it would be counterproductive to the employment needs of the Federal Government to limit placement assistance to the commuting area of the former National Guard Technician position and would also represent an under hardship to the individual to terminate the disability annuity if he/she failed to accept a position for which qualified in the former commuting area of the National Guard Technician position; and, (2) that mandatory placement assistance be required for a period of one or two years only with continued assistance beyond that period optional. Adoption of these two suggestions would, however, exceed both the letter and intent of 5 U.S.C. 8337(h).

Section 302(a) of Pub. L. 97-253, the Omnibus Budget Reconciliation Act of 1982, which became codified as 5 U.S.C. 8337(h), specifically states, in part, that National Guard Technicians who become disabled from performing their National Guard Technician duties and who apply for or are " * * * receiving any annuity pursuant to this subsection shall " * * * be considered by any agency of the Government " * * * if the position is located within the commuting area of the individual's former position " * * * " It is therefore clear from this statutory language that placement assistance is to be mandatory (due to the use of the word "shall"), is to be indefinite in duration, i.e., extending through the period of annuity entitlement, and is to be confined to the commuting area of the individual's

former National Guard Technician position. OPM has no authority to alter statutory provisions; only legislative action can amend these particular provisions and thereby enable OPM to adopt a placement assistance approach consistent with the above suggestions. Further, for OPM to expand placement assistance to include other than the commuting area of the former National Guard Technician position would impose an administrative burden not intended by Congress. Congressional intent in this area, i.e., controlling retirement outlays by encouraging continued employment of and providing comparable employment opportunities for Technicians who become disabled for military, but not civilian, duties, also supports the termination of such a disability annuity if a former National Guard Technician declines a regular civilian position for which qualified.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to conditions for appointment of certain employees by Federal agencies.

List of Subjects in 5 CFR Part 330

Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management is adopting its interim rule (which added subpart H to 5 CFR Part 330) as final with minor editorial amendments. The text is set forth below:

Subpart H—Placement Assistance for National Guard Technicians Who Become Entitled to a Disability Annuity

Sec.

- 330.801 Coverage.
 - 330.802 OPM assistance.
 - 330.803 Priority referral.
 - 330.804 Department of Defense responsibility for placement assistance.
 - 330.805 Duration of eligibility for assistance.
- (5 U.S.C. 3301, 3302, 8337(L))

§ 330.801 Coverage.

This subpart applies to current or former National Guard Technicians who—

- (a) Are or were separated from such positions on or after December 31, 1979, because of a medical disability that disqualified them from membership in the National Guard or from holding the

military grade required for such employment;

(b) Have not been found by OPM to be disabled under subchapter III of chapter 83 of title 5, United States Code, section 8337(a);

(c) Have applied for or are receiving an annuity under the provisions of subchapter III of chapter 83 of title 5, United States Code, section 8337(h); and,

(d) Are not eligible for assistance under Subpart C of this part.

§ 330.802 OPM assistance.

An employee covered by this subpart is subject to mandatory enrollment in an OPM placement assistance program. Such an employee shall receive priority consideration for vacant positions in the Federal Government in accordance with the provisions of § 330.803 of these regulations.

§ 330.803 Priority referral.

(a) An employee covered by this subpart shall be referred, both by OPM and agencies with delegated examining authority, and considered by any agency of the Government for any vacant position at GS-15 and below or the equivalent whenever—

(1) An agency plans to seek or is seeking the names of qualified candidates from a register or registers of competitive eligibles maintained by OPM or agencies with delegated examining authority;

(2) The position is expected to last more than one year;

(3) The position is located within the commuting area of the employee's former National Guard Technician position;

(4) The position is at the same grade or equivalent level as the National Guard Technician position from which the employee was separated; and,

(5) The employee is qualified for the vacant position as determined by the head of the agency or his/her designee.

In addition, OPM and agencies with delegated examining authority will refer the names of employees covered by this subpart whenever an agency requests recruiting assistance for positions in the excepted service.

(b) When an agency selects an individual referred under this subpart, it will generally employ him or her under authority of Part 213, Subpart C, § 213.3102(j) of the excepted service or other appropriate excepted service appointing authorities.

§ 330.804 Department of Defense responsibility for placement assistance.

(a) The Department of Defense shall, as the Government agency employing

National Guard Technicians and in accordance with its own personnel management policies and practices, ensure that employees covered by this subpart receive appropriate consideration as defined by the Department of Defense for positions within the military departments and defense agencies for which the head of that department or agency, or his/her designee, determines that the individual is qualified, which is in the same commuting area and which is at the same grade or equivalent level as the National Guard Technician position from which the employee was separated.

(b) The Department of Defense will be notified by OPM whenever a National Guard Technician who was separated on or after December 31, 1979, and before October 1, 1982, from such a position of a medical disability that disqualified him/her from membership in the National Guard or from holding the military grade required for such employment has filed a timely application for disability annuity under 5 U.S.C. 8337(h). The department shall, in turn, take steps to provide appropriate internal placement consideration to such individuals beginning on the day following the date that such notification from OPM has been received by the department. Further, the department or its appropriate component will be responsible for enrolling such individuals into OPM's placement assistance program as soon as is reasonably possible, with the expectation that, in most cases, enrollment can be made within 30 calendar days following the date that the department has been notified by OPM that a timely application for a disability annuity under 5 U.S.C. 8337(h) has been filed by the former National Guard Technician.

(c) For National Guard Technicians who are separated on or after October 1, 1982, because of a medical disability that disqualified him/her from membership in the National Guard or from holding the military grade required for such employment, internal Department of Defense placement consideration shall begin as soon as the determination has been made by the department or its appropriate component that the technician is no longer qualified for membership in the National Guard and shall continue after the date of actual separation from the National Guard Technician position in accordance with paragraph (a) of this section. The Department of Defense or its appropriate component will also be responsible for enrolling such

individuals into OPM's placement assistance program as soon as is reasonably possible, with the expectation that, in most cases, enrollment can be made within 15 calendar days following the actual date of separation from the National Guard Technician position.

§ 330.805 Duration of eligibility for assistance.

(a) An employee covered by this subpart is eligible for OPM placement assistance without time limit. Eligibility will, however, be terminated upon—

(1) His/her reemployment by a Federal department or agency in a nontemporary position;

(2) His/her declination of any position in the Government for which he/she has been found qualified by the head of the agency or his/her designee, and which is at the same grade or equivalent level, in the same commuting area and with at least the same tenure and work schedule as the former National Guard Technician position;

(3) His/her restoration to earning capacity as determined by OPM pursuant to the terms of section 8337 of title 5, United States Code; or,

(4) Any other circumstance which terminates his/her eligibility for an annuity under section 8337(h)(1) of title 5, United States Code.

(b) When an agency appoints a former National Guard Technician who has applied for or is receiving an annuity under section 8337(h) of title 5, United States Code, or when an agency makes an offer of a position which conforms to the requirements of paragraph (a)(2) of this section and the offer is declined, the agency shall notify OPM of such an appointment or declination. This notification shall include the date of the appointment or declination and, if an appointment, the title, pay plan, series, grade, and rate of pay of the position.

[FR Doc. 83-23807 Filed 8-29-83; 8:45 am]

BILLING CODE 8325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 227

Nutrition Education and Training Program; Reduced Administrative Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR 227.30(c) and 227.37(b)(6) of the

Nutrition Education and Training (NET) Program regulations; the NET Program is authorized in Section 15 of the Child Nutrition Act of 1966, Pub. L. 95-166, 91 Stat. 1340. Section 227.30(c) is revised to allow States the option of appointing a full-time or part-time NET Coordinator. Section 227.37(b)(6) is revised to delete the requirements to establish a State Advisory Council and provide, in the State plan, a description of the functions and membership of the council. This change allows State agencies the option of continuing the council or selecting another method of soliciting advice and recommendations from the public and interested groups.

EFFECTIVE DATE: These amendments will become effective September 29, 1983.

FOR FURTHER INFORMATION CONTACT: Henry S. Rodriguez, Director, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 (703) 756-3585.

SUPPLEMENTARY INFORMATION:

Classification

The Department does not consider this final rule to be a "major rule" under the definition established in Executive Order 12291. This final rule will not have an annual effect on the economy of \$100 million, will not cause a major increase in costs or prices, and will not have a significant impact on competition, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This final rule does not contain reporting and record keeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Regulatory Flexibility Analysis

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Background

The Nutrition Education and Training (NET) Program was established in Fiscal Year 1978 under Pub. L. 95-166 to encourage the dissemination of nutrition information to children participating (or eligible to participate) in the school lunch and other child nutrition programs. The program provides grants

to State educational agencies for comprehensive nutrition education and training.

In Fiscal Years 1978 and 1979, \$26.2 million was appropriated per year. A total grant of 50 cents was authorized for each child enrolled in schools or institutions. No State received less than \$75,000 per year for the program. In Fiscal Year 1980 the appropriation was \$20 million. The Omnibus Budget Reconciliation Act of 1980 reduced the appropriation to \$15 million for Fiscal Year 1981 and authorized an extension of the program through Fiscal Year 1984. The Omnibus Budget Reconciliation Act of 1981 reduced the Fiscal Year 1982 appropriation to \$5 million and established a ceiling of \$5 million on future appropriations. In 1982 Pub. L. 97-370 reduced the minimum grant to \$50,000 for Fiscal Year 1983.

On Tuesday, March 15, 1983 the Department published in the *Federal Register* (48 FR 10848) a proposed rule that would amend the NET Program regulations to reduce administrative requirements. On April 14, 1983, the comment period for the proposed rule closed. Thirty-six comments were received during the comment period. Comments were received from representatives of State departments of education, local school districts, State departments of health, a Federal agency, colleges and universities, nutrition and/or education-related councils, nutrition and public health professionals, consumer advocacy groups, a local agency administering the Headstart program, and several concerned citizens. Letters with multiple signatures were counted as one comment.

Summary of Comments

Of the thirty-six responses received, thirty-four respondents commented on the proposal to allow the appointment of a part-time coordinator. Seven of the commentors: five State agencies, one State department of health, and one Federal government office, favored the proposal. Twenty-seven commentors, including three State agencies, one State department of health, two State departments of education, three Federal offices, and eleven citizens and advocate groups were opposed. Four of the commentors who opposed a part-time coordinator as proposed recommended that a part-time coordinator be allowed under specific conditions.

Of the thirty-six respondents, twenty-nine commented on the proposal to eliminate the advisory council requirement. Seven commentors: four State departments of education and three Federal government offices

favored eliminating the advisory council requirement. Twenty-two commentors were opposed including five State NET councils, six State offices, one Federal official, and ten public groups and individuals.

Analysis of Comments Concerning Part-Time Coordinator

Four State departments of education and three regional personnel commented in favor of allowing a part-time State coordinator.

Comments favoring the optional part-time appointment of a NET coordinator take reduced NET funding into account: "Given current funding level, minimum funded NET programs may benefit from a part-time coordinator." For example, one State NET program had not been allowed a full-time coordinator by the State. Another State department of education indicates that due to the reduced NET funding level, new teaching materials are no longer being developed and current NET funds are being used to distribute existing materials. Furthermore, at current funding levels, the State argues that to pay a full-time coordinator would require 50 percent of the State's NET funds for salary. In view of this, the State has opted to spend this available money on distribution of materials instead.

Fourteen commentors opposing the optional part-time appointment of a NET coordinator express concern that such a change in the requirements would weaken the program. They point out the need for a full-time specialist to oversee and evaluate effectiveness of the program; to reduce the potential for fraud, waste, and abuse; and to fulfill the legislative mandate of the program. One commentor states that the prolonged recession makes the NET program, which has been a viable force in changing children's food habits, even more significant. The commentor suggests that expansion not reduction of services is needed to serve the population.

Discussion: This rule returns to the states the right to assume more administrative control of the NET Program by allowing the States to determine whether a full-time or part-time coordinator best meets their needs. The Department does not believe that this change will weaken the NET Program. Since the inception of the Program, States have had great success in implementing nutrition education programs for children, teachers, and food service personnel, and the department believes that States will continue to provide quality services.

Thus, in view of funding levels statutorily established for this program, the Department will amend the regulations to allow States the option of appointing the full-time or part-time coordinator.

Analysis of Comments Concerning Elimination of the State Level Advisory Council Requirement

Seven respondents, four State departments of education and three Federal agency officials, favor the proposal to eliminate the State-level advisory council requirement. Commentors address a number of major considerations: the preference for States to work with groups that are directly affected by the use of NET funds in the State, rather than an intermediate-level council; the problem of funding travel to statewide meetings of advisory council members in those States with a large geographic area; and the difficulty in finding available interested people to serve on the council. Another commentor states that some State departments of education have alternate requirements for obtaining public advice which results in duplication of services if a separate advisory council is required. Another commentor speaks to the desirability of making State-level advisory councils optional.

Sixteen of the commentors opposing this option state that the council serves an essential role in the NET Program: providing a broad base of support, expertise, and an important link with the community. They suggest the council facilitates coordination of professional efforts to promote nutrition education and provides direction as well as creative implementation. Some argue the council maintains the integrity of the program by serving as a checks and balances system. Two commentors suggest reducing the size of the council, another suggests reducing the travel expenses of members by using alternate methods of communicating—such as mail, reducing the number of meetings held each year, or reducing the number of council members. Another commentor suggests that cutting both the council and the full-time coordinator seriously erodes the program and accountability. Others oppose the change without further comment.

Discussion: Statutorily established funding levels make previous regulatory requirements for a State advisory council no longer cost effective in many cases. Therefore, the Department will not require that a State Advisory Council be used for solicitation of advice to the NET Program. Nor will the

Department require that membership or functions of the optional council be included in the State plan. However, in response to commentor concerns, the final regulation as amended will require, in accordance with the authorizing legislation, that States through their coordinators continue to obtain advice and recommendations from professionals, parents, and others interested in child nutrition. Plans to solicit such advice and recommendations shall continue to be included in the State plan.

List of Subjects in 7 CFR Part 227

Education, Grant program—education, Grant programs—health, Infants and children, Nutrition.

PART 227—[AMENDED]

Accordingly, 7 CFR Part 227 is being amended as follows:

1. Section 227.30(c) is amended by revising the first sentence to read as follows:

§ 227.30 Responsibilities of State agencies.

(c) State Coordinator. After execution of the agreement the State agency shall appoint a nutrition education specialist to serve as a State Coordinator for the Program who may be employed on a full-time or part-time basis. * * *

2. Section 227.37(b)(6) is revised to read as follows:

§ 227.37 State Plan for Nutrition Education and Training

(b) * * *
(6) plans to solicit advice and recommendations of the National Advisory Council on Child Nutrition, State educational or other appropriate agencies; the U.S. Department of Education; the U.S. Department of Health and Human Services; and other interested groups and individuals concerned with improvement of child nutrition. * * *

(Sec. 15, Pub. L. 95-166, 91 Stat. 1340 (42 U.S.C. 1788))

Dated: August 23, 1983.

Robert E. Leard,
Administrator.

[PR Doc. 83-23725 Filed 8-29-83; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 967

Celery Grown in Florida; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This handling regulation establishes the quantity of Florida celery to be marketed fresh during the 1983-84 season, with the objective of assuring adequate supplies and orderly marketing.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-2815.

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act.

Information collection requirements contained in this regulation (7 CFR Part 967) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0681-0082.

This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it will not significantly affect costs for the directly regulated handlers.

Marketing Agreement No. 149 and Order No. 967, both as amended, regulate the handling of celery grown in Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Florida Celery Committee, established under the order, is responsible for local administration.

This regulation is based upon the unanimous recommendations made by the committee at its public meeting in Orlando on June 14.

The committee recommended a Marketable Quantity of approximately 6.9 million crates of fresh celery for the 1983-84 season. This recommendation is based on the appraisal of the expected supply and prospective market demand.

Notice of the proposed regulation was published in the July 13 *Federal Register* (48 FR 32028) inviting written comments by August 12, 1983. None was received.

The Marketable Quantity is about 15 percent more than the approximately six million crates marketed fresh during the season which ended July 31, 1983. Each

producer registered pursuant to § 967.37(f) will have an allotment equal to 100 percent of his historical marketings. This regulation provides the industry an opportunity to (1) produce to its fullest capacity for the benefit of the consumer, and (2) determine its actual or potential maximum production capacity.

As required by § 967.37(d)(1) a reserve of six percent of the 1982-83 total Base Quantities is authorized for new producers and for increases by existing producers. Three applications for increases were received, and the committee allocated the 259,537 crates available among those three producers.

Findings. On the basis of all considerations it is hereby determined that this regulation will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) adequate notice has been given of the requirements of this regulation through publicity in the production area and by publication in the July 13 Federal Register; (2) the regulation should become effective as early as possible in the marketing year which begins August 1, so producers and handlers will be afforded maximum time in which to plan their operations; and (3) compliance with this section, which is similar to those issued in previous seasons, requires no special preparation by handlers which cannot be completed prior to the time actual handling of harvested celery begins, generally in the latter part of October.

List of Subjects in 7 CFR Part 967

Marketing agreements and orders, Celery, Florida.

PART 967—[AMENDED]

§ 967.318 [Removed]

Section 967.318 (47 FR 38494, September 1, 1982) is removed and a new § 967.319 is added as follows:

§ 967.319 Handling Regulation; Marketable Quantity; and Uniform Percentage for the 1983-84 Season Ending July 31, 1984.

(a) The Marketable Quantity established under § 967.36(a), is 6,875,737 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and

such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) a reserve of six percent of the total Base Quantities is hereby authorized for (1) new producers and (2) increases for existing Base Quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

(Approved by Office of Management and Budget under control number 0581-0082)

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 24, 1983, to become effective upon publication.

Charles R. Brader,

Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 83-23741 Filed 8-29-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Wardair Canada (1975) Ltd.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by changing the name of Wardair Canada, Ltd. to Wardair Canada (1975) Ltd.

EFFECTIVE DATE: July 25, 1983.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service has entered into an agreement with Wardair Canada (1975) Ltd. to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilities processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to

notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely changes an air carrier's name on the present listing and is editorial in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, Chapter I of Title 8 of Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended as follows:

1. Change "Wardair Canada, Ltd." to "Wardair Canada (1975) Ltd." under "At Montreal".

2. Change "Wardair Canada, Ltd." to "Wardair Canada (1975) Ltd." under "At Toronto".

3. Change "Wardair Canada, Ltd." to "Wardair Canada (1975) Ltd." under "At Winnipeg".

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: August 25, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations,
Immigration and Naturalization Service.

[FR Doc. 83-23777 Filed 8-29-83; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0479]

Delegation of Authority to Reserve Banks To Approve Applications To Acquire Banks

AGENCY: Federal Reserve System.

ACTION: Technical Amendment.

SUMMARY: This is a technical amendment to § 265.2(f)(22) of the Rules Regarding Delegation of Authority to correct an error in a previous amendment that appeared in the Federal Register on July 27, 1983 (48 FR 34016).

EFFECTIVE DATE: August 23, 1983.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason Chaiffetz, Senior Counsel, Legal Division (202/452-3584).

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act analysis and Regulatory Impact analysis have not been included in this notice because the change effected by this amendment is technical in nature. These analysis are included in the Federal Register notice that accompanied the previous substantive amendments (48 FR 34016). The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with this amendment because it is a technical one.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies, Banks, banking, Federal Reserve System.

Pursuant to its authority under section 3(a), 4(c)(8) and 5(b) of the Bank Holding Company Act, and section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)), the Board of Governors is amending its Rules Regarding Delegation of Authority (12 CFR 265). The regulations appearing in FR Doc. 83-20196 (48 FR 34016) are corrected by revising § 252.2(f)(22) (iv) and (v) and by adding paragraph (vi) as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

(f) . . .

(22) . . .

(iv) the application raises a significant policy issue or legal question on which the Board has not established its position; or

(v) with respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) that rank among a State's ten largest banking organizations in terms of total domestic banking assets; or

(B) each of which has more than \$100 million of total deposits in banking offices in the same local banking market that, after consummation of the proposal, would control over 10 percent of total deposits in banking offices in that local market; or

(vi) with respect to nonbank acquisitions:

(A) the nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.4(a) of Regulation Y; or

(B) the proposal would involve the acquisition by a banking organization that has total domestic banking assets of \$1 billion or more of a nonbanking organization that appears to have a significant presence in a permissible nonbanking activity.²

Board of Governors of the Federal Reserve System, August 23, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-23545 Filed 8-29-83; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6480; 34-20105; 35-23040; 39-846; 1A-877; 1C-13456]

Acceptance of Travel Reimbursement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Pub. L. 98-38 which became effective on June 6, 1983, grants to the Commission, subject to the adoption of rules to prevent conflicts of interest, the authority to accept from non-federal sponsors payment or reimbursement for expenses incurred by Commission members and staff in connection with participation at conferences and meetings. The Commission has adopted regulations to implement this authority.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Myrna Siegel, Ethics Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, 202-272-2430.

SUPPLEMENTARY INFORMATION: Pub. L. 98-38, which became effective on June 6, 1983, grants to the Commission the authority to accept payment or reimbursement for expenses incurred by Commission members and staff in connection with participation at conferences and meetings. To implement this authority, the Commission has adopted regulations which establish a procedure for determining when and how the Commission will accept such payment or reimbursement. The regulations have a two-fold purpose: To eliminate real or apparent conflicts of interest in connection with the acceptance of payments or reimbursements and to create

² While other situations may involve the issue of significant presence, the Board regards, as a general guideline, any company that ranks among the 20 largest independent firms in any industry as having a significant presence.

administrative procedures for determining when reimbursement will be accepted by the Commission and the mechanism for public disclosure of such acceptance.

Discussion

The Commission has generally deemed participation by its members and employees in continuing legal education programs, securities industry conferences, accounting profession meetings, and similar functions as important factors in fostering compliance with and understanding of the federal securities laws. While sponsoring organizations often have been willing to pay the actual expenses of Commission members and employees invited to participate in meetings and conferences of an educational nature, interpretations of federal statutes prohibited acceptance for travel by Commissioners from all sponsors, except those which are tax-exempt pursuant to 26 U.S.C. 501(c)(3). Additionally, the prohibitions imposed by the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, have restricted members of the Commission from accepting reimbursement for assistance in various types of proceedings rendered at the behest of foreign governments.

These constraints on accepting such reimbursements, coupled with the restrictions on the size of the Commission's travel budget, have compelled members of the Commission to limit their participation in educational and similar programs. The authority recently granted to the Commission will permit Commissioners to continue to engage in educational functions, while placing the burden of the cost of such participation on the sponsors, rather than the federal government.

The rules which the Commission has adopted to implement its new authority have been carefully tailored to avoid any real or apparent conflicts of interest. The rules contemplate that all travel by Commission members and staff for participation in educational meetings will be pursuant to the procedures detailed in these regulations. The regulations continue the Commission's current policy of prohibiting acceptance of any payment or reimbursement from entities which are registered with the Commission or directly or indirectly regulated by the Commission. Indirect regulatees are affiliates, parents and subsidiaries of regulated entities. Moreover, no reimbursement will be accepted by the Commission in connection with a conference which is sponsored by a registered or regulated entity, whether or not that sponsor is

directly paying for expenses. The determination as to whether payment or reimbursement will be accepted by the Commission from an association predominantly composed of entities regulated by the Commission will be made by the Commission's Chairman.

Except with respect to programs sponsored by groups predominantly composed of entities regulated by the Commission, the decision as to whether the Commission will accept payment or reimbursement in connection with staff member participation at a particular meeting will be made by the Commission's Executive Director. Notice of all determinations with respect to acceptance of payment or reimbursement by the Commission will be placed in a public file in the Commission's Public Reference Room, Washington, D.C., and a compilation of payments or reimbursements accepted will be published quarterly in the *SEC Docket*.

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 54, U.S.C.

List of Subjects in Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendments

PART 200—ORGANIZATION, CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS

In consideration of the foregoing, the Commission hereby amends Part 200 of Chapter II, Title 17, Code of Federal Regulations as follows:

1. Paragraph (b)(6) of § 200.735-4 is revised as follows:

§ 200.735-4. Outside employment and activities.

(b) ***

(6)(i) Subject to the specific prohibition and requirements set forth below, the Commission may accept payment or reimbursement in cash or in kind, for travel and subsistence expenses actually incurred by Commission members and employees, while on official duty status, in connection with the participation of such members and employees in conferences, proceedings, meetings, seminars, and educational programs concerning the functions and

responsibilities of the Commission and related topics.

(ii)(A) The Commission shall accept no payment or reimbursement for expenses described in paragraph (b)(6)(i) of this section from or in connection with a conference sponsored by:

(1) A person directly required to file reports or registration statements with the Commission, or

(2) A person directly or indirectly regulated by the Commission, or

(3) Any association or other group composed predominantly of persons regulated by the Commission, *Provided, however,* That the Chairman may authorize the Commission to accept payment or reimbursement from such a group. In determining whether to authorize such payment or reimbursement, the Chairman shall consider the benefits to the Commission and the public of participation in the particular program and the possibility of any appearance of impropriety.

(B) For purposes of this section, the phrase "person regulated by the Commission" means all persons whose activities are directly regulated by, or who are required to register with, the Commission, including but not limited to, such persons as brokers or dealers in securities, national securities exchanges, national securities associations, investment companies, investment advisers, public utility holding companies, and any self-regulatory organization, as that term is defined in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. 78(c).

(iii)(A) Subordinate members of the staff who are invited to participate in programs which offer payment or reimbursement meeting the criteria of paragraph (b)(6)(i) of this section must, prior to participation, obtain the written approval of their Division Director, Office Head, or Regional Administrator to participate in the program and the written approval of the Chairman, if paragraph (b)(6)(ii)(A)(3) of this section applies. If paragraph (b)(6)(ii)(A)(3) of this section does not apply, the Executive Director shall determine in writing whether the Commission will accept the payment or reimbursement.

(1) In acting on requests to participate, Division Directors, Office Heads, and Regional Administrators shall consider: (i) the benefit to the Commission and the public of participation; (ii) the expertise of the proposed participant; and (iii) the appropriate allocation of resources.

(2) In determining whether the Commission shall accept payment or reimbursement, the Executive Director shall consider the possibility of any appearance of impropriety.

(B) Division Directors, Office Heads, and Regional Administrators must, prior to participation, obtain the written approval of the Chairman, if paragraph (b)(6)(ii)(A)(3) of this section applies. If paragraph (b)(6)(ii)(A)(3) of this section does not apply, the Executive Director shall determine, in writing, considering the possibility of any appearance of impropriety, whether the Commission will accept the payment or reimbursement. Division Directors, Office Heads, and Regional Administrators shall make the determinations specified in paragraph (b)(6)(iii)(A)(1) of this section as to their own participation.

(C) Except if paragraph (b)(6)(ii)(A)(3) of this section applies, each Commissioner shall determine for himself or herself whether payment or reimbursement for his or her expenses incident to participation in programs meeting the criteria of paragraph (b)(6)(i) of this section should be accepted by the Commission. Notice of each decision shall be sent to the Executive Director.

(D) Whenever it is determined, pursuant to paragraphs (b)(6)(iii)(A), (B), or (C) of this section that the Commission will accept a particular payment or reimbursement, the Executive Director shall forward notice of that decision to the Public Reference Room, Washington, D.C., for insertion in a public file.

(iv) Payment or reimbursement shall not be accepted for expenses which are unreasonable or lavish.

(v) On a quarterly basis, the Commission shall publish in the *SEC Docket* a compilation of payments and reimbursements accepted.

(vi) The Commission's acceptance from any person of payment or reimbursement for the expenses of a spouse or traveling companion accompanying a member or employee is prohibited. If a staff member wishes to participate in a program which offers payment or reimbursement meeting the criteria of paragraph (b)(6)(i) of this section and acceptance would not be prohibited by paragraph (b)(6)(ii) of this section, but is denied approval in accordance with paragraphs (b)(6)(iii)(A) or (B) of this section, or wishes to accept reimbursement for the travel expenses of his or her spouse or traveling companion, the staff member may participate in the program and accept such reimbursement personally, *Provided, That:*

(A) No reimbursement for travel expenses may be accepted from a person who does, or is seeking to do, business with the Commission, is

regulated directly or indirectly by the Commission, is registered with the Commission, or has interests which may be substantially affected by the official's performance or non-performance of his or her official duties.

(B) No reimbursement may be accepted for the travel expenses of an employee's spouse or traveling companion unless the prior written approval of the General Counsel is obtained. Under appropriate circumstances, such as programs where participants are expected to engage in social activities, the General Counsel may approve acceptance upon written application.

(C) A copy of the General Counsel's approval and notice of the amount of payment or reimbursement accepted from the sponsor must be sent to the Executive Director for inclusion in the public file in accordance with paragraph (b)(6)(iii)(D) of this section.

(D) Such staff member's participation and travel occur only while on annual leave, approved in accord with regular leave procedures. *Note 7 CFR 200.735-4(e)(2)(ii).*

The Commission finds that the foregoing action relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comments under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, are unnecessary. *See 5 U.S.C. 553(b).*

By the Commission.
George A. Fitzsimmons,
Secretary.

August 23, 1983.
(FR Doc. 83-23833 Filed 8-29-83; 8:43 am)
BILLING CODE 9010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 83C-0128]

Color Additives; D&C Yellow No. 10

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is "permanently" listing D&C Yellow No. 10 for use in drugs and cosmetics, except for use in the area of the eye. This action is in response to a petition filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc.), the Pharmaceutical

Manufacturers Association, and the Certified Color Industry Committee (now the Certified Color Manufacturers Association). This rule will remove D&C Yellow No. 10 from the provisional list of color additives for use in drugs and cosmetics. Published elsewhere in this issue of the *Federal Register* is an order extending the closing date for the provisional listing of D&C Yellow No. 10 until November 1, 1983, to provide an opportunity for the filing of objections to this order.

DATES: Effective September 30, 1983, objections by September 29, 1983.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of November 20, 1968 (33 FR 17205), FDA announced that a petition (CAP 8C0062) for the permanent listing of D&C Yellow No. 10 as a color additive for use in drugs and cosmetics, except for use in the area of the eye, had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc.), the Pharmaceutical Manufacturers Association, and the Certified Color Industry Committee (now the Certified Color Manufacturers Association), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046 (now 9200 Leesburg Turnpike, Vienna, VA 22180).

The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376). A later notice in the *Federal Register* of March 5, 1976 (41 FR 9584), amended the notice of filing of the petition to include the use of D&C Yellow No. 10 in cosmetics intended for use in the area of the eye.

I. Toxicological Testing of D&C Yellow No. 10

In the *Federal Register* of September 23, 1976 (41 FR 41860), FDA stated that it no longer considered existing toxicological studies to be adequate to support the continued provisional listing of several color additives, including D&C Yellow No. 10. The agency explained that the studies were deficient in the following respects (41 FR 41863):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that were too small to permit conclusions to be drawn today on the chronic toxicity or

carcinogenic potential of the color additives tested. The small number of animals used does not, in and of itself, cause this result but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficient number of animals was reviewed histologically.

4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

The agency proposed that the continued provisional listing of these color additives, including D&C Yellow No. 10, for use in ingested drugs and cosmetics be conditioned upon at least one petitioner undertaking new chronic feeding studies for each of these color additives. The agency did not require any additional studies for the continued provisional listing of D&C Yellow No. 10 for use in externally applied drugs and cosmetics.

FDA intended that the new chronic studies on the use of D&C Yellow No. 10 in ingested drugs and cosmetics would provide important evidence upon which to determine whether to list this color additive. Additionally, the agency noted that these studies would serve to replace the generally antiquated and deficient studies that supported the provisional listing regulations then in effect for the color additive.

When the petitioners agreed to sponsor the required chronic toxicity studies of the color additive, FDA postponed the closing date for the provisional listing of D&C Yellow No. 10 to January 31, 1981, in a notice published in the *Federal Register* of February 4, 1977 (42 FR 6992).

In the *Federal Register* of August 21, 1979 (44 FR 48964), FDA established temporary tolerances for the use of D&C Yellow No. 10 in ingested drugs and cosmetics. These temporary tolerances were adopted to assure that use of the color additive would not exceed a safe level of exposure. They were based on usage information and data from chronic animal feeding studies, submitted by the petitioners, in which no adverse effects

were noted at the highest dose tested. FDA received an objection in response to this order requesting that the use of D&C Yellow No. 10 be limited only by good manufacturing practice. The agency considered this objection and concluded that the limits prescribed by the order on the use of this color additive were necessary to protect the public health (April 4, 1980; 45 FR 22904).

FDA established a closing date of April 30, 1983, for the provisional listing of D&C Yellow No. 10 in the Federal Register of March 27, 1981 (46 FR 18954). The agency subsequently established the closing date of July 1, 1983, for the provisional listing of D&C Yellow No. 10 in a rule published in the Federal Register of April 29, 1983 (48 FR 19366). FDA's review and evaluation of the data relevant to the use of D&C Yellow No. 10 required more time than anticipated, however. The agency therefore extended the closing date to September 2, 1983, in the Federal Register of July 1, 1983 (48 FR 30357), to provide time to complete its review and prepare this document. Published elsewhere in this issue of the Federal Register is an order extending the closing date for the provisional listing of D&C Yellow No. 10 until November 1, 1983, to provide an opportunity for the filing of objections to this order.

II. Analysis of Data

The agency has completed its evaluation of the color additive petition for D&C Yellow No. 10, including the new chronic toxicity studies in rats and mice. The agency previously reviewed reports on a number of other toxicity studies, involving rats and dogs, of D&C Yellow No. 10. These studies included acute oral toxicity studies, 3-month feeding studies, and 2-year feeding studies. These studies did not produce any evidence that the use of this color additive would be unsafe for the petitioned uses. The agency concluded, however, that the additional chronic toxicity feeding studies were required to provide data to permit a final determination to be made on the listing of D&C Yellow No. 10 (41 FR 41860; September 23, 1976).

The new chronic studies in rats and mice represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity studies. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of the two species

tested (the rat) significantly increase the power of these tests for detecting dose-related effects. The studies were designed and conducted in full compliance with the current good laboratory practice regulations and were subject to FDA inspection while the studies were conducted.

The chronic feeding study in male and female Charles River CD Sprague Dawley rats actually consisted of two studies of the same design. In the first study, the animals were fed 0.03, 0.10, and 0.5 percent D&C Yellow No. 10 in the diet. The animals in the second study received higher concentrations (2.0 and 5.0 percent) of the color additive in the diet. No effects on tumor incidence, survival, food consumption, clinical observations, or pathological findings were observed that were attributable to the ingestion of D&C Yellow No. 10. The results of the first study showed that mean body weights for the treated males and females were comparable to the control body weights throughout the study. In the second study, body weights of male rats that were fed diets containing 5.0 percent D&C Yellow No. 10 were less than the controls throughout the study ($P < 0.05$). Male and female animals fed 2.0 percent D&C Yellow No. 10 did not demonstrate a significant decrease in body weight over the course of the study.

In the chronic feeding study with Charles River CD-1 mice of both sexes, the animals were fed 0.10, 1.0, and 5.0 percent D&C Yellow No. 10 in the diet. Sporadic occurrences of reduced body weights were observed in treated male animals, but the findings were not statistically significant or dose-related. There was no increased incidence of tumors that could be attributed to the ingestion of D&C Yellow No. 10.

Based on its evaluation of the results of the two new chronic toxicity studies, the agency has determined that D&C Yellow No. 10 is not carcinogenic to Charles River CD Sprague Dawley rats or Charles River CD-1 mice after a lifetime dietary exposure of up to 5.0 percent of the color additive for each species. Based on the occurrence of reduced body weights in rats fed 5 percent D&C Yellow No. 10, the agency has established a "no effect" level at 2 percent in rats. Using an appropriate safety factor (see 21 CFR 70.40), the agency has estimated a maximum acceptable daily intake for humans of approximately 10 milligrams per kilogram of body weight per day (600 milligrams per day for a 60-kilogram person).

The agency has also completed its evaluation of the other animal studies submitted by the petitioner for the

purpose of establishing the safety of D&C Yellow No. 10 for use in externally applied drugs and externally applied cosmetics. Dermal studies intended to support the safety of external uses of D&C Yellow No. 10 were conducted with D&C Yellow No. 11, the oil soluble (nonsulfonated) dye used to manufacture D&C Yellow No. 10. The agency considered the use of D&C Yellow No. 11 as representative in dermal studies for the water soluble D&C Yellow No. 10 because D&C Yellow No. 11 is similar in structure to D&C Yellow No. 10 and expected to have greater skin penetration. Thus, the agency concluded that these dermal studies can appropriately be used in evaluating the safety of D&C Yellow No. 10. The dermal studies included skin irritation and percutaneous toxicity studies in albino rabbits and a lifetime skin painting study for carcinogenesis in Swiss-Webster mice. With respect to dermal safety, the studies on D&C Yellow No. 11 indicate that the closely related D&C Yellow No. 10 is nonirritating to the skin and is not systemically toxic through percutaneous absorption. Furthermore, D&C Yellow No. 11 was not found to be carcinogenic when applied to the skin of mice. Therefore, FDA can conclude to a reasonable certainty that no harm will result from the petitioned dermal uses of D&C Yellow No. 10.

III. Identity and Method of Manufacture

D&C Yellow No. 10 (21 CFR 82.1710) originally was listed as the disodium salt of disulfonic acid of 2-(2-quinoliny)-1,3-indandione. The agency has since determined that the color additive that was toxicologically tested in the chronic animal feeding studies discussed above and certified as D&C Yellow No. 10 is a mixture of the sodium salts of the mono- and disulfonic acids of 2-(2-quinoliny)-1H-indene-1,3(2H)-dione, consisting principally of the sodium salts of 2-(2,3-dihydro-1,3-dioxo-1H-indene-2-yl)-8-quinolinesulfonic acid and 2-(2,3-dihydro-1,3-dioxo-1H-indene-2-yl)-8-quinolinesulfonic acid, with lesser amounts of disodium salts of the disulfonic acids of 2-(2-quinoliny)-1H-indene-1,3(2H)-dione. Therefore, the agency concludes that D&C Yellow No. 10 is appropriately identified as a mixture of mono- and disulfonated sodium salts, principally in the monosulfonated form.

The agency also concludes that it is necessary to include in the listing regulation for D&C Yellow No. 10 a brief description of its manufacturing process to ensure the safety of this color additive. The agency is concerned that

D&C Yellow No. 10 may contain potentially toxic impurities dependent upon the manufacturing process used to produce it.

In the manufacture of D&C Yellow No. 10, one of the starting materials, 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione (D&C Yellow No. 11), may remain in the color additive as a minor impurity. D&C Yellow No. 11 is permanently listed for use only in externally applied drugs and cosmetics because the available toxicological studies failed to establish a safe level for ingested use. Adverse effects were found in the livers of rats and dogs fed D&C Yellow No. 11 in short-term and chronic studies. Analysis of batches of D&C Yellow No. 10 used in the recent toxicity tests showed the presence of almost 2 parts per million (ppm) of D&C Yellow No. 11 and 1 ppm of other diethyl ether soluble matter, which is mostly chlorinated D&C Yellow No. 11. Although no hepatotoxic effects were observed in animals exposed to the D&C Yellow No. 10 toxicology sample, FDA believes that in the interest of safety it is necessary to set limits for D&C Yellow No. 11 and its chlorinated derivative in D&C Yellow No. 10 because of the adverse effects found in the D&C Yellow No. 11 studies. These limits will ensure that future batches of D&C Yellow No. 10 are consistent with the batches used in the toxicological testing. The agency is setting a specification for D&C Yellow No. 11 of 4 ppm and for the other diethyl ether soluble matter of 2 ppm. FDA expects that, on the average, the levels of these minor constituents in batches of D&C Yellow No. 10 certified under the specifications will be below the levels set in the specifications and consistent with the toxicological sample. To further characterize batches of D&C Yellow No. 10 for certification, the agency is also setting specifications for other impurities that have been detected in certification samples of D&C Yellow No. 10.

The agency, however, is not able at this time to set specifications that would control the presence of all impurities in D&C Yellow No. 10. The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex. Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general

description, the manufacturing process in the regulations for these color additives will provide an adequate assurance of safety until suitable specifications can be developed. Production of the color additive by the specified method will assure qualitatively similar batches and thus adequately assure the absence of harmful impurities resulting from changes in the manufacturing process.

The agency is including a description of the manufacturing procedure in 21 CFR 74.1710(a) and is incorporating it by reference in 21 CFR 74.2710(a) for cosmetics.

IV. Conclusions

The agency concludes that D&C Yellow No. 10 is safe under the conditions of use set forth below for use in drugs and cosmetics, and that certification is necessary for the protection of the public health. The final chronic toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies are on file at the Dockets Management Branch (address above). They may be reviewed there between 9 a.m. and 4 p.m., Monday through Friday.

V. Eye-Area Use

FDA notified the petitioners by letters dated June 21, 1974, January 29, 1976, February 5, 1976, and August 15, 1977, of the need for data to support the use of D&C Yellow No. 10 in cosmetics intended for use in the area of the eye. In a fifth letter, dated October 24, 1978, FDA advised the petitioners to consider withdrawing that portion of the petition that sought approval of the use of D&C Yellow No. 10 in cosmetics intended for use in the area of the eye because the required data from eye-area studies apparently were not readily available.

The petitioners have not submitted the required data for eye-area use. Therefore, FDA now considers that portion of the petition that was amended by the filing on March 5, 1976 (Docket No. 76C-0043) to include the permanent listing of D&C Yellow No. 10 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Section 71.4 requires that such information be submitted within 180 days after filing of the petition, or the petition will be considered withdrawn without prejudice.

Use of D&C Yellow No. 10 in the area of the eye has never been covered by provisional listing. Future consideration by FDA of the permanent listing of D&C Yellow No. 10 for eye-area use will require the submission of a new color additive petition for that use. The

agency's listing of a color additive for use in drugs and cosmetics does not encompass eye-area use.

The agency has determined pursuant to 21 CFR 25.24(b)(12) and (d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376(b), (c), and (d))) and under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

a. By adding new § 74.1710 to read as follows:

§ 74.1710 D&C Yellow No. 10.

(a) *Identity.* (1) The color additive D&C Yellow No. 10 is a mixture of the sodium salts of the mono- and disulfonic acids of 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione consisting principally of the sodium salts of 2-(2,3-dihydro-1,3-dioxo-1H-indene-2-yl)-6-quinolinesulfonic acid and 2-(2,3-dihydro-1,3-dioxo-1H-indene-2-yl)-8-quinolinesulfonic acid with lesser amounts of the disodium salts of the disulfonic acids of 2-(2-quinolinyl)-1H-indene-1,3(2H)-dione (CAS Reg. No. 8004-92-0). D&C Yellow No. 10 is manufactured by condensing quinaldine with phthalic anhydride to give the unsulfonated dye, which is then sulfonated with oleum.

(2) Color additive mixtures made with D&C Yellow No. 10 for drug use may

contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* The color additive D&C Yellow No. 10 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Sum of volatile matter at 135° C (275° F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
Matter insoluble in both water and chloroform, not more than 0.2 percent.
Total sulfonated quinaldines, sodium salts, not more than 0.2 percent.
Total sulfonated phthalic acids, sodium salts, not more than 0.2 percent.
2-(2-Quinoliny)-1H-indene-1,3 (2H)-dione, not more than 4 parts per million.
Sum of sodium salts of the monosulfonates of 2-(2-quinoliny)-1H-indene-1,3 (2H)-dione, not less than 75 percent.
Sum of sodium salts of the disulfonates of 2-(2-quinoliny)-1H-indene-1,3 (2H)-dione, not more than 15 percent.
2-(2,3-Dihydro-1,3-dioxo-1H-indene-2-yl)-6,8-quinolinedisulfonic acid, disodium salt, not more than 3 percent.
Diethyl ether soluble matter other than that specified, not more than 2 parts per million, using added 2-(2-quinoliny)-1H-indene-1,3 (2H)-dione for calibration.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 85 percent.

(c) *Uses and restrictions.* The color additive D&C Yellow No. 10 may be safely used for coloring drugs generally in amounts not to exceed 10 milligrams per daily dose of the drug.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.2710 to read as follows:

§ 74.2710 D&C Yellow No. 10.

(a) *Identity and specifications.* The color additive D&C Yellow No. 10 shall conform in identity and specifications to the requirements of § 74.1710(a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Yellow No. 10 may be safely used for coloring cosmetics in amounts consistent with current good

manufacturing practice. D&C Yellow No. 10 may be safely used for coloring lipsticks and other cosmetics intended to be applied to the lips in amounts not exceeding 1.0 percent by weight of the finished lipstick or other cosmetic.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* by removing the entry for "D&C Yellow No. 10" from the table in paragraph (b).

§ 81.25 [Amended]

b. In § 81.25 *Temporary tolerances* by removing the entries for "D&C Yellow No. 10" from paragraphs (a)(1), (b)(1)(i), and (c)(1).

§ 81.27 [Amended]

c. In § 81.27 *Conditions of provisional listing* by removing the entry for "D&C Yellow No. 10" from the table in paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended by revising § 82.1710, to read as follows:

§ 82.1710 D&C Yellow No. 10.

The color additive D&C Yellow No. 10 shall conform in identity and specifications to the requirements of § 74.1710(a)(1) and (b) of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 28, 1983 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show how the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issue for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed

description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective September 30, 1983, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the *Federal Register*.

(Sec. 706(d), (c), and (d), 74 Stat. 399-403 [21 U.S.C. 376(b), (c), and (d); sec. 203, Pub. L. 80-618, 74 Stat. 404-407 [21 U.S.C. 376, note)])

Dated: August 25, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

(FR Doc. 83-23706 Filed 6-29-83; 8:45 am)

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Yellow No. 10 for Use in Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Yellow No. 10 for use as a color additive in drugs and cosmetics. The new closing date will be November 1, 1983. This brief postponement will provide time for the receipt and evaluation of any objections submitted in response to the final rule (published elsewhere in this issue of the *Federal Register*,) approving the petition for the listing of D&C Yellow No. 10 for these uses.

DATES: Effective September 2, 1983, the new closing date for D&C Yellow No. 10 will be November 1, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of September 2, 1983, for the provisional listing of D&C Yellow No. 10 for use in drugs and cosmetics by a rule published

in the Federal Register of July 1, 1983 (48 FR 30357). The agency established that closing date to provide additional time for the agency to review and consider the scientific and legal aspects of the results of the toxicological studies on D&C Yellow No. 10 submitted by several petitioners and to prepare the appropriate Federal Register document(s). Previously in the Federal Register of April 29, 1983 (48 FR 19366), FDA had published a rule establishing the July 1, 1983 closing date to provide time for the agency to complete its review and consider the scientific and legal aspects of the results of the toxicological studies on D&C Yellow No. 10 submitted by several petitioners. In the Federal Register of March 27, 1981 (48 FR 18954), FDA had published a rule establishing the April 30, 1983 closing date to provide time for completion of FDA's review and evaluation of the data concerning the use of D&C Yellow No. 10 and preparation of a final decision on the petitions for the permanent listing of this color additive.

After reviewing and evaluating the data, the agency had concluded that D&C Yellow No. 10 is safe for use in drugs and cosmetics. Therefore, elsewhere in this issue of the Federal Register, FDA is publishing a regulation that lists D&C Yellow No. 10 for these uses. The regulation set forth below will postpone the September 2, 1983 closing date for the provisional listing of this color additive until November 1, 1983. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the regulation that lists D&C Yellow No. 10 for use in drugs and cosmetics.

Because of the short time until the September 2, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule because the agency has concluded that D&C Yellow No. 10 is safe for its intended uses under the Color Additive Amendments of 1960. This final rule will permit the uninterrupted use of this color additive until November 1, 1983. To prevent any interruption in the provisional listing of D&C Yellow No. 10 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective on September 2, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d))), under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing date for "D&C Yellow No. 10" in paragraph (b) to read "November 1, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "D&C Yellow No. 10" in paragraph (d) to read "November 1, 1983."

Effective date. This final rule shall be effective September 2, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: August 12, 1983.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

(FR Doc. 83-33707 Filed 8-29-83; 8:45 am)

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0386]

Provisional Listing of FD&C Blue No. 2; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Blue No. 2 for use as a color additive in food and ingested drugs. The new closing date will be December 2, 1983. This brief postponement will provide additional time for the agency to complete evaluation of objections received in response to the final regulation approving the petition for the permanent listing of FD&C Blue No. 2.

DATE: Effective September 2, 1983, the new closing date for FD&C Blue No. 2 will be December 2, 1983.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 4, 1983 (48 FR 5252), FDA published a final rule that amended the color additive regulations by "permanently" listing FD&C Blue No. 2 under §§ 74.102 and 74.1102 (21 CFR 74.102 and 74.1102). The final rule also amended § 81.1(a) (21 CFR 81.1(a)) by removing FD&C Blue No. 2 from the provisional list of color additives and amended § 81.27(d) (21 CFR 81.27(d)) by removing FD&C Blue No. 2 from the conditions of provisional listing. Additionally, the final rule amended § 82.102 (21 CFR 82.102) for FD&C Blue No. 2 to conform the identity and specifications to the requirements of § 74.102(a)(1) and (b).

The agency received a letter stating objections to the listing regulation and requesting a hearing on those objections. The letter is on file at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 83N-0009.

FDA established the current closing date of September 2, 1983, for the provisional listing of FD&C Blue No. 2 for use as a color additive in food and ingested drugs by a rule published in the Federal Register of July 1, 1983 (48 FR 30358). The agency extended the closing date to provide additional time to complete evaluation of the objections received in response to the final regulation approving the petition for the permanent listing of FD&C Blue No. 2. Previously in the Federal Register of April 29, 1983 (48 FR 19364), FDA published a final rule establishing the July 1, 1983 closing date to provide time for the agency to evaluate and act on the objections received. The final rule announced that the regulations that permanently listed FD&C Blue No. 2 for food and ingested drug use were stayed pending final agency action on the objections.

The review and evaluation of the objections received in response to the final rule approving the petition for the permanent listing of FD&C Blue No. 2 have require more time than anticipated. Therefore, FDA concludes that an extension of the closing date to December 2, 1983, is necessary. This postponement will provide the additional time needed for the agency to complete its review and to prepare and to publish the appropriate Federal Register document(s). The agency has

concluded that no harm to the public health will result from this extension.

Because of the short time until the September 2, 1983 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing this postponement as a final rule.

This final rule will permit the uninterrupted use of this color additive until December 2, 1983. To prevent any interruption in the provisional listing of FD&C Blue No. 2 and in accordance with 5 U.S.C. 553(d)(1) and (3), this final rule is being made effective on September 2, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376(b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing date for "FD&C Blue No. 2" in paragraph (a) to read "December 2, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "FDC Blue No. 2" in paragraph (d) to read "December 2, 1983."

Effective date. This final rule shall be effective September 2, 1983.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376(b), (c) and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note))

Dated: August 11, 1983.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-23771 Filed 8-29-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. I

[FHWA Docket No. 83-4 Notice 10]

Truck Size Policy Statement; Modifications of Certain Interim Designated Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Modification of policy statement.

SUMMARY: The FHWA made an interim designation of each State's Federal-aid primary system highways on April 5, 1983. These roads were to be made available to certain size trucks from April 6 until issuance of the final regulation pursuant to the requirements of the Surface Transportation Assistance Act (STAA) of 1982. By this notice, the FHWA provides modifications to the interim designated highway networks for the States of Delaware, New York, and Tennessee.

DATE: The modifications are effective August 30, 1983 and will expire upon designation of the final network.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Strickland, Office of Highway Planning (202) 426-0153, or Mr. David C. Oliver, Office of the Chief Counsel (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 7:30 a.m. to 4:00 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On April

5, 1983, FHWA issued a policy statement (48 FR 14844) that provided an interim designation of primary system highways on which commercial motor vehicles with dimensions authorized by Sections 411 and 416 of the STAA of 1982 (Pub. L. 97-424, as amended by Pub. L. 98-17) may be permitted to operate from April 6, 1983, until issuance of final regulations. The policy statement also provided that modifications to the interim designated network would be made under certain circumstances.

The designated routes in the Appendix to this notice supersede those routes designated in the April 5, 1983, policy statement. On May 3, 1983 (48 FR 20022), May 12, 1983 (48 FR 21317), June 2, 1983 (48 FR 24852), and July 8, 1983 (48 FR 31588 with corrections published August 4, 1983 at 48 FR 35388) modifications were made to 32 States. At this time, the FHWA is announcing additional modifications to the designation of three States previously modified. The current interim system for the three States is included in the Appendix. Highlights of the three State-by-State modifications follow.

- Delaware—Routes DE 141 and old US 301S have been removed from the interim system. DE Truck Rt. 896 is now US 301S.

- New York—NY 430, NY 426, NY 12F, US 11, NY 56, NY 37, SPUR, US 2, and NY 2, have been removed from the interim system. Portions of NY 17, NY 33, NY 481, US 15, NY 12, NY 49, NY 7, and NY 5 have been removed from the interim system. Portions of NY 104, NY 5, and US 20 have been added to the interim system.

- Tennessee—US 41/70S have been added to the interim system.

Issued: August 23, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

Appendix—List of Other Qualified Routes

DELAWARE

| Posted route No. | From | To |
|------------------|------------------------------------------|--------------------------|
| US 13 | Junction with I-495, South of Wilmington | Maryland State Line. |
| US 301 | US 301S, Mt. Pleasant | Maryland State Line. |
| US 202 | I-95, Wilmington | Pennsylvania State Line. |
| US 301S | US 301, Mt. Pleasant | US 13, Boyds Corner. |

NEW YORK

| Posted route No. | From | To |
|-------------------------|-----------------------------------------|----------------------------------------|
| NY 17. | US 219, Carrollton. | Exit 24 Allegany. |
| NY 17. | Exit 24, Allegany. | I-87 Thruway, Exit 16 at Hamman. |
| US 219. | Pennsylvania State Line. | NY 39, Springville. |
| US 219. | NY 39, Springville. | I-90 Thruway, Exit 55. |
| NY 400. | I-90 Thruway, Exit 54. | NY 16, South Wales. |
| NY 199. | I-190 Thruway, Exit N11. | NY 33, Buffalo. |
| NY 33. | Michigan Avenue Buffalo. | Greater Buffalo International Airport. |
| NY 179. | NY 5, Windom. | I-90, Windom. |
| NY 75. | NY 5, Mount Vernon. | US 20, Mount Vernon. |
| Walden Avenue. | I-90 Thruway, Exit 52. | NY 277, Cheektowaga. |
| NY 277. | 0.4 miles south of NY 130, Cheektowaga. | Walden Avenue, Cheektowaga. |
| NY 268. | Buffalo City Limit. | NY 325, Tonawanda. |
| NY 325. | NY 266, Tonawanda. | Kenmore Avenue Tonawanda. |
| NY 390. | I-490, Rochester. | NY 18, North Greece. |
| NY 590. | I-490, Rochester. | NY 104, Irondequoit. |
| Inner Loop. | I-490, Rochester. | I-490, Rochester. |
| NY 15. | Commerce Drive Rochester. | NY 252, Rochester. |
| NY 15A. | NY 252, Rochester. | I-390, Rochester. |
| NY 204. | NY 33A, Gates. | I-490, Gates. |
| NY 252. | NY 15, Rochester. | NY 15A, Rochester. |
| NY 441. | I-490, East Rochester. | NY 253, East Rochester. |
| NY 690. | I-90, Lakeland. | NY 370, Baldwinsville. |
| NY 481. | I-81, North Syracuse. | NY 3, Fulton. |
| NY 695. | NY 5, Fairmont. | I-690, Solvay. |
| NY 5. | Maple Avenue Camillus. | West Genesee, Fairmont. |
| NY 298. | I-690, Syracuse. | I-81, Syracuse. |
| US 15. | Interchange in Presho. | NY 17, Corning. |
| NY 7. | I-81, Binghamton. | I-88, Port Dickinson. |
| NY 12. | I-790 near I-90 Utica. | Putnam Road Trenton. |
| NY 8. | County Road 3, Saugus. | I-790, Utica. |
| NY 26. | NY 365, Rome. | NY 46, Rome. |
| NY 365. | I-90 Thruway, Exit 33. | NY 49, Rome. |
| NY 49. | NY 365, Rome. | NY 291 near Oriskany. |
| North Genesee Arterial. | NY 55, Utica. | NY 5, Utica. |
| NY 254. | I-87, Glen Falls. | 0.3 miles East of US 9. |
| NY 254. | 0.3 mile East of U.S. 9. | U.S. 4, Hudson Falls. |
| US 4. | NY 254, Hudson Falls. | Vermont State Line. |
| Berkshire Thruway. | I-87 Thruway, Exit 21A. | I-90 Thruway, Exit B1. |
| US 9. | 0.6 miles South of NY 254. | 0.5 miles North of NY 254. |
| NY 7. | Schenectady-Albany County Line. | West City Line of Watervliet. |
| NY 5. | East City Line of Schenectady. | North City Line of Albany. |
| Wolf Road. | NY 5 at I-87, Colonie. | I-87 at NY 155, Colonie. |
| NY 440. | New Jersey State Line. | I-278, Staten Island Expressway. |
| NY 495. | I-278 Brooklyn-Queens Expressway. | I-678, Van Wyck Expressway. |
| NY 495. | I-295, Clearview Expressway. | NY 25, Riverhead Suffolk. |
| NY 17. | New Jersey State Line. | I-87, Suffern. |
| NY 104. | Maplewood Drive Rochester. | Monroe-Wayne County Line. |
| NY 5. | NY 179, Windom. | NY 75, Mount Vernon. |
| US 20. | NY 75, Mount Vernon. | Howard Road, Mount Vernon. |

TENNESSEE

| Posted route No. | From | To |
|-------------------|----------------------------------------|--------------------------------------------|
| Briley Parkway. | I-40 near Nashville. | I-65 near Nashville, Tennessee State Line. |
| TN 137, US 29. | TN 67 Johnson City. | TN 1 Kingsport. |
| US 51. | Near Memphis. | Purchase Parkway, Kentucky State Line. |
| US 45. | Mississippi State Line. | Near Jackson. |
| US 45/45W Bypass. | Near Jackson. | Union City near TN 22. |
| US 79. | Memphis near I-40. | Guthrie at US 41, Kentucky State Line. |
| US 641. | I-40 near Natchez Trace State Park. | Kentucky State Line near TN 140. |
| US 231. | Alabama State Line near Fayetteville. | Kentucky State Line near TN 52. |
| US 127. | TN 27 Spur near Chattanooga. | Static at Kentucky State Line. |
| US 27. | Walden. | Kentucky State Line. |
| US 25E. | I-81. | Harrogate at Virginia State Line. |
| US 70 Alternate. | Atwood at US 79. | Huntingdon at TN 22. |
| US 70. | Huntingdon at TN 22. | Dickson. |
| US 70. | Sparta at TN 111. | Crossville at US 127. |
| US 70 S. | Murfreesboro at US 231. | Sparta at TN 111. |
| US 64/41. | Memphis at TN 15. | I-24 at Monteagle. |
| US 64. | Cleveland near I-40. | Near Belflow at North Carolina State Line. |
| US 43. | Near St. Joseph at Alabama State line. | Lawrenceburg at US 64. |
| US 72. | Alabama State Line. | I-24. |
| TN 153. | I-75. | US 27 at Walden. |
| TN 96. | US 70. | I-40. |
| US 70. | Briley Parkway. | Sparta. |
| TN 27 Spur. | I-124. | US 127. |
| US 41/70 S. | US 231, Murfreesboro. | TN 102 in Sumner. |

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Imposition of Condition of Approval on the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document imposes a new condition on the Secretary of the Interior's approval of the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The new condition relates to the authority of the State to deny an application for a permit or permit renewal unless the applicant submits proof that all required Federal reclamation fees have been paid.

Following notification to the State that a State program amendment was required to meet the requirements of SMCRA and the Federal regulations; receipt of the State's agreement to submit an amendment; and review of the public comments in response to the proposed condition, the Secretary is imposing a new condition on his approval of the Virginia program.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION: The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088-61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 Federal Register.

Background

Sections 510(b) and 510(c) of SMCRA limit the issuance of new permits and permit renewals to those applicants who are in compliance with the requirements of SMCRA. As specified in section 402 of SMCRA and Subchapter R of 30 CFR,

the operators of coal surface mines are to pay reclamation fees to the Secretary of the Interior. Further, section 402(f) of SMCRA specifically mandates full cooperation with the Secretary by all Federal and State agencies in the enforcement of this provision.

Recently it was brought to the Secretary's attention that the Virginia program does not contain regulatory language consistent with 30 CFR 786.19(h) which requires the State to deny permit applications and permit revision applications unless the applicant has submitted proof that all Federal reclamation fees required under 30 CFR Subchapter R have been paid.

To resolve this issue, on January 4, 1983, the Director, OSM, sent a letter to Virginia to request that Virginia either voluntarily amend its program to add a regulation consistent with 30 CFR 786.19(h), or revise its permitting procedures to ascertain such information prior to approving a permit application. As of June 1, 1983, Virginia had not formally responded to OSM's January 4 letter.

Pursuant to 30 CFR 732.17(e), the Secretary notified Virginia by letter of June 1, 1983, that a State program amendment was required because conditions or events indicate that the approved State program no longer met the requirements of SMCRA and the Federal regulations. The letter notified Virginia, pursuant to 30 CFR 732.17(f)(1), that it must submit to the Secretary within 60 days of receipt of notification either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of SMCRA and the Federal regulations, and a timetable for enactment which is consistent with established administrative or legislative procedures. OSM also noted that the Secretary would propose adding a new condition to the Virginia program requiring the State to amend its program by a specified date to incorporate requirements no less effective than 30 CFR 786.19(h). The proposed rule announcing intent to impose a new condition and requesting public comment was published June 9, 1983 (48 FR 26624).

On August 1, 1983, Virginia responded to OSM's June 1, 1983 letter. The State's letter indicated that it would propose to amend the Virginia permanent program at V786.19 to add a new Subsection (o) stating "The applicant has submitted proof that all reclamation fees lawfully required under Title IV of the Federal Act have been paid." The letter indicated that the amendment would be subject to the State's administrative procedures, thus a completion date of

March 1, 1984, to satisfy the condition was requested.

Inasmuch as Virginia has agreed to submit such an amendment within the State's established administrative procedures, the Secretary is granting a deadline of March 1, 1984, to Virginia to submit an amendment to the State's regulations to satisfy the condition. Upon receipt of the promulgated State program amendment, a public comment period and opportunity for public hearing on whether the Virginia amendment is no less effective than the Federal provisions will be announced in the Federal Register.

Public Comment

The Environmental Policy Institute (EPI) commented that it supported the proposed condition to the Virginia program. However, EPI expressed concern that a substantial number of operators in Virginia have avoided payment of Federal reclamation fees by establishing operations of two acres or less. The Secretary finds that the latter comment is outside of the scope of this rulemaking in that the issue at hand is whether a new condition should be imposed on the Virginia program. When Virginia submits a State program amendment to satisfy the condition, the Secretary will seek public comment on whether the Virginia proposed amendment is no less effective than the Federal provisions.

The Virginia Mining and Reclamation Association, Inc., urged that the proposed condition be withdrawn from consideration because the condition would improperly extend the regulatory authority's control over mining operations which are exempt under SMCRA and are not subject to the fees. The Secretary disagrees that the condition would improperly extend the regulatory authority's control. The intent of the condition is that the State have the authority to deny an application for a permit or permit renewal unless the applicant submits proof that all required Federal reclamation fees have been paid. As stated in the previous comment, upon receipt of the State program amendment, the Secretary will seek public comment on the adequacy of the amendment to satisfy the condition.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the*

Regulatory Flexibility Act: On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 946 is amended as set forth herein.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

Dated: August 23, 1983.

William P. Pendley,

Deputy Assistant Secretary for Energy and Minerals.

PART 946—VIRGINIA

30 CFR 946.11 is amended to add a new paragraph (t) as follows:

§ 946.11 Conditions of State regulatory program approval.

(t) Termination of the approval found in § 946.10 will be initiated on March 1, 1984, unless Virginia submits to the Secretary by that date a copy of promulgated regulations or otherwise amends its program to contain provisions no less effective than 30 CFR 786.19(h) to require the State to deny permit applications and permit revision applications unless the applicant has submitted proof that all Federal reclamation fees required under 30 CFR Subchapter R have been paid.

[FR Doc. 83-23842 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 920

Standards of Conduct

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 920—Standards of Conduct, Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 30-30 has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Hopson, HQ USAF/JACM, Washington, D.C. (202) 694-4075.

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR is amended by removing and reserving Subchapter L and by removing Part 920.

List of Subjects in 32 CFR Part 920

Armed forces reserves, Conflict of interest, Government employees, Military personnel.

(10 U.S.C. 8012)

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-23708 Filed 8-29-83; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 717

[OPTS-83001B; TSH FRL 2378-7]

Records and Reports of Allegations That Chemical Substances Cause Significant Adverse Reactions to Health or the Environment; Recordkeeping and Reporting Procedures

Correction

In FR Doc. 83-22942 beginning on page 38178 in the issue of Monday, August 22, 1983, first column, under **EFFECTIVE DATE**, "September" should read "November".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3040, 3100, 3110, 3120, 3140 and 3150

Minerals Management and Oil and Gas Leasing; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule correction.

SUMMARY: A final rulemaking revising the provisions of the regulations in Groups 3000 and 3100 of Title 43 of the Code of Federal Regulations was published in the *Federal Register* on July 22, 1983 (48 FR 33648). The publication contained a number of errors which are corrected by this notice.

EFFECTIVE DATE: August 30, 1983.

ADDRESS: Any inquiries or suggestions should be sent to: Director (620), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Zabler (202) 343-7722 or Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The corrections are as follows:

1. On page 33648, in the first column, in the first paragraph of the Summary, the number "300" is corrected by being replaced with the number "3000".

2. On page 33648, in the third column, under the heading "Section 3045.0-1," the second line is corrected by inserting immediately after the word "rulemaking" the word "suggested".

3. On page 33650, in the first column, the first full paragraph, second and third lines, are corrected by removing the phrase "favorable petroleum geological structure" and replacing it with the phrase "favorable petroleum geological province".

4. On page 33650, in the first column, under the heading "Section 3100.3," the fifth and sixth lines of the first paragraph, are corrected by removing the phrase "favorable petroleum geological structure" and replacing it with the phrase "favorable petroleum geological province".

5. On page 33652, in the second column, the eighth line, the phrase "remainder to the rental" is corrected to read "remainder of the rental".

6. On page 33652, in the third column, under the heading "Section 3103.3-2," the first sentence is corrected by removing the words "not prorating" and by correcting the second and third sentences by combining them to read "The final rulemaking adopts the provisions of the proposed rulemaking adopted on September 30, 1976, in

conjunction with the change in rental policy that was discussed earlier in this preamble."

7. On page 33655, in the second column, the sixth sentence is corrected to read "No other right-of-way statute has been so construed and the need for special leasing authority never existed for any other type of right-of-way."

§ 3102.4 [Corrected]

8. On page 33667, in § 3102.4, the citation "§ 3112.6-1(b)(3)" is corrected to read "§ 3112.6-1(b)(1)(iii)".

§ 3102.5 [Corrected]

9. On page 33667, in § 3102.5, the citation "§ 3100.0-5(k)" is corrected to read "§ 3000.0-5(k)".

§ 3103.2-2 [Corrected]

10. On page 33667, § 3103.2-2(d), the sixth line, the phrase "favorable geologic province" is corrected to read "favorable petroleum geological province".

§ 3103.4-1 [Corrected]

11. On page 33668, in § 3103.4-1(a), the fourth line is corrected to read "upon a determination that it is necessary".

§ 3108.4 [Corrected]

12. On page 33674, in § 3108.4, line nine, is corrected by removing the words "are on notice".

§ 3111.3-4 [Corrected]

13. On page 33678, in § 3111.3-4(d), the sixth line is corrected by removing the word "or" and replacing it with the word "of".

Garrey E. Carruthers,
Assistant Secretary of the Interior.
August 24, 1983.

[FR Doc. 83-23724 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CT Docket No. 82-528; RM-4099; FCC 83-365]

Cable Television Service; Annual Financial Report Requirement

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 76.403 of the Rules by eliminating the annual financial reporting requirement for cable television systems and the form utilized in collecting this information, "Cable

Television Annual Financial Report" (FCC Form 326). The Commission determined that the costs imposed on cable systems and the Commission by the routine, industry-wide collection of financial data were no longer justified in view of the limited benefits derived from such data in connection with Commission policy determinations and consideration of individual cases. Moreover, the Commission determined that alternative, less burdensome, means of collecting or obtaining financial data are or could be made available if the need arises.

DATE: Effective September 2, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert H. Ratcliffe, Mass Media Bureau (202) 632-7793.

List of Subjects in 47 CFR 76

Cable television.

Report and Order; Proceeding Terminated

In the matter of amendment of Part 76, Subpart I of the Commission's Rules and Regulations with respect to the Cable Television Annual Financial Report (FCC Form 326); CT Docket No. 82-528, RM-4099.

Adopted: July 28, 1983.

Released: August 3, 1983.

By the Commission.

I. Background and Summary of Action

1. By issuance of a *Notice of Proposed Rule Making* in the above-referenced docket, 47 FR 30257 (August 19, 1982), the Commission proposed elimination of the annual financial reporting requirements for cable television operators and, in particular, that part of § 76.403 of the Rules that requires every cable operator to complete and file a "Cable Television Annual Financial Report" FCC Form 326.

2. In the *Notice*, at paragraph 6, the Commission indicated that the use of cable television annual financial information "has been limited and has not proved essential for our regulation of cable television." It added that the limited use of this information in the past in the context of individual waiver or special relief cases would not appear to justify "annual collection of such information on an industry-wide basis" but rather only collection of such information "in the individual cases where it is deemed essential." *Id.* In addition, the Commission indicated that many of the considerations that led to the elimination of broadcast annual financial reporting requirements in *Report and Order in BC Docket 80-190*, FCC 82-127, 47 FR 13345 (1982), e.g., the burdens these requirements place on the

agency and its regulatees, also appeared applicable to the cable financial reporting requirements. Thus, for example, at paragraph 5, it pointed out that "the reporting system occupies a significant amount of internal administrative resources that might be devoted to higher priority matters." The Commission stated that "[i]f the need for such information becomes important, [it] may well be able to rely on special studies tailored to specific policy planning and analysis needs in connection with fulfilling . . . [its] regulatory responsibilities." *Id.* at para. 7. Based upon these and other preliminary findings, it recommended elimination of these requirements and invited interested persons to comment upon proposed deletion of these requirements.

3. In response to the *Notice*, comments were filed by the following cable operators or cable-related interests: Adams-Russell Telecommunications Group and Service Electric Cable TV, Inc. ("Adams-Russell"); Allen's TV Cable Service, Inc., and 50 other cable operators ("Allen's TV et al."); Buckeye Cablevision, Inc., and 9 other cable operators ("Buckeye"); Cable Communications Operations, Inc. ("Operations, Inc."); Donrey, Inc. ("Donrey"); (Law Firm of) Farrow, Schidhouse and Wilson ("Farrow"); Heritage Communications, Inc. ("Heritage Communications"); Meyer Broadcasting Company d/b/a Bismarck-Mandan Cable TV ("Meyer Broadcasting"); Missouri Telephone Company ("MTC"); North Carolina CATV Association, Inc. ("NCCATV"); National Cable Television Association, Inc. ("NCTA"); Platteville Cable TV Corporation ("Platteville Cable"); and Prime Cable Corporation ("Prime Cable"). Joint comments were filed by the Office of Communication of the United Church of Christ and the Committee for Community Access ("UCC"). Reply comments were filed by Adams-Russell Telecommunications Group, Service Electric Cable TV, Inc., and Jones Intercable, Inc., jointly ("Adams-Russell et al.") and by Donrey, Inc.

4. For the reasons discussed herein, we conclude that retention of the cable television annual financial reporting requirements would not serve the public interest. Accordingly, we are deleting these requirements from Section 76.403 of the Rules.¹ In addition, we also

¹ For information already on file with this agency, we shall continue to afford the confidentiality provided under § 0.457(d) of the Rules.

decline to preempt, prescribe or otherwise limit financial disclosure or reporting requirements imposed on cable operators by state or local governmental authorities.

II. Summary of Comments

5. We note that all the above-mentioned parties with the exception of UCC express support in favor of our recommendation to eliminate cable financial reporting requirements. These cable interests take the view that such information is of limited value in regulating cable television, and that the Commission has the responsibility to delete them since they do not presently serve public interest goals. In addition, some cable interests question whether we have the authority to collect such information from cable systems, especially in view of our deletion of similar requirements applicable to broadcasters. They argue that since the Commission's jurisdiction over cable television is "reasonably ancillary" to the effective performance of its statutory responsibilities over television broadcasting, it is doubtful that the Commission could continue to impose these requirements on cable operators. Moreover, they suggest that even if there was once a need for comprehensive annual financial information, the Commission's more limited regulatory approach no longer warrants the present reporting obligations. Indeed, NCTA states that, in view of the limited use of this information, retention of the present requirement represents regulatory "overkill." Further, cable interests assert that if the Commission finds that such information is necessary, it can rely on legislative reports, special studies or trade reports. Cable interests also state that these requirements are precisely the sort of unwarranted burden the *Regulatory Flexibility Act*, Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601-612 (1980), seeks to abolish and the sort of unnecessary paperwork the *Federal Paperwork Reduction Act*, Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. 3501-3520 (1980), targeted for elimination.

6. Moreover, cable interests argue that the report constitutes an unnecessary burden to cable operators. For example, Meyer Broadcasting and Prime Cable state that they are already required to report their financial condition on diverse forms with the Copyright Royalty Tribunal, with state corporation (and sometimes public utility) commissions, with franchising authorities, and with state, local and federal tax authorities. Some cable operators point out that the burden financial reporting imposes on the

broadcast industry has been previously recognized and eliminated by the Commission and that the counterpart burdens imposed on the cable industry should be similarly lifted. They argue that the burden on the cable industry is even greater because many systems are individually-owned with small staffs already overburdened by other requirements and because many cable systems, unlike radio or television stations, are also subject to regulation at the state or local level.³ In addition, they emphasize that the costs initially incurred by the cable operator are ultimately borne by the public.

7. Many of the cable interests provided specific information on the costs in terms of financial outlays or workhours expended in complying with these requirements. For example, Heritage Communications, which owns, operates, or controls 116 cable systems serving 200 communities, indicates that approximately two hours per year for each cable system is expended in providing required FCC annual financial information and that this translates into a total cost of approximately \$1740. Platteville Cable estimates that these requirements result in annual operating costs ranging between \$350 and \$500 to its system. It adds that these costs, when added to the costs of the other reports filed with the Commission and with the Copyright Office, result in increased but unnecessary costs of service to its subscribers. Adams-Russell indicates that Service Electric, in Docket 21202, estimated that conformance with revised Form 326 reporting requirements would cost \$22,000 and 2,000 workhours, and that such costs were considerable at that time and are even more considerable now, particularly in view of the limited benefit derived from use of this information. Other cable interests provide information on the additional costs of doing business that are incurred in complying with these requirements. In its comments, NCTA states that an informal survey of multiple system operators indicates that an average of 7.7 man hours per system is spent to complete FCC Form 326. NCCATV states that the cost of compliance per system probably does not exceed a few thousand dollars at a maximum, but that if it does increase the costs of doing

business which, when combined with other costs, affects the price charged to the consumer for service. Cable interests maintain that these requirements are also burdensome on the Commission in terms of staff resources that are needed to administer, collect, and aggregate this information into annual industry financial reports, especially in view of the absence of any significant countervailing benefits of this information to the Commission or the public.

8. Farrow expresses serious reservations that deletion of these requirements at the federal level will lead to increased and unnecessary state and local regulation and, accordingly, recommends that the Commission preempt state and local financial disclosure or reporting requirements unrelated to rate regulation. However, most cable interests are not particularly concerned that state and local authorities might impose similar reporting requirements on cable operators. For example, Donrey indicates that such a prospect is purely speculative.⁴ Buckeye states that while some state and local regulatory authorities allow submission of copies of FCC Form 326 in lieu of special state or local reports, many more have imposed reporting obligations requiring different information and some jurisdictions have even imposed their own special accounting systems.

9. UCC maintains that FCC Form 326 is a tool of growing, rather than diminishing, importance to the present and future regulation of cable. In addition, this information provides a consistent, organized and long-range source of otherwise unavailable data to both federal and local governments as well as the public. UCC argues that such information is necessary to make accurate and competent decisions in various regulatory matters such as the current network/cable cross-ownership rule making proceeding and franchise fee matters. UCC maintains that Form 326 information provides for rapid analysis of trends within the cable industry and that it is the only source of information the Commission has regarding the financial status of the cable industry. While "special studies" may be suitable for the now mature television broadcast industry, they would not, according to UCC, reveal basic developmental trends as would the information supplied by Form 326. UCC indicates that the dynamic growth

of the cable industry, the rapidly increasing mix of satellite, microwave, and other communications services, and the growing financial and social impact which the cable industry will have upon the American public⁵ are some of the factors that call upon the Commission to monitor the financial condition of the cable industry, its relationship to other media, and its effect upon the public interest. UCC maintains that compliance with present requirements is not burdensome to cable operators because they already maintain this type of information in the ordinary course of business. UCC adds that they will continue to do so even if the Commission eliminates FCC Form 326. Moreover, to the extent that local authorities rely upon FCC Form 326 in local franchising and refranchising proceedings, the present requirements relieve cable operators of unnecessary costs and inconvenience that would be occasioned by financial reporting requirements different from those of the Commission.

10. In reply, Adams-Russell *et al.* state that UCC's arguments for retention of FCC Form 326 are premised on the erroneous assumptions that Commission regulation of cable television will increase in the future and that financial information regarding the cable industry is not readily available from other sources. They indicate that UCC is incorrect on both points. First, the Commission has been in the process of disengaging itself from unnecessary and burdensome regulations and, second, while detailed financial ownership for individual systems is not available, industry-wide data is available.⁶

III. Discussion

11. We believe that the initial reasons advanced for recommending elimination of the cable television annual financial reporting requirements have on the whole been substantiated by the comments filed in this proceeding. We have received considerable evidence of the burdens imposed by the present requirements on cable operators, their

³ In this connection, a number of cable operators as well as NCTA refer to a recent study by Ernst and Whinney, *The Cost of Cable Television Regulatory And Franchise Requirements: A Preliminary Analysis* (April 1982), which indicates that as much as twenty-two percent of the price of cable service is attributable to the cost of compliance with federal, state, and local rules and regulations.

⁴ In reply comments, however, Donrey requests that the Commission carefully limit the amount and type of financial information which a state or local entity can require of cable systems.

⁵ In this connection, UCC points out that cable penetration will almost double to 60% of all American homes by 1990, that predicted advertising revenues for cable will expand from \$100 million in 1981 to \$250 million in 1982, and that such revenues will exceed \$1 billion annually by 1986 and \$3 billion by 1990. UCC states that the "predicted growth of cable advertising will parallel the growing financial and social impact of the cable industry upon the American public" and thus evidences the need for rapid analysis of trends within the cable industry.

⁶ Indeed, Adams-Russell *et al.*, as well as Donrey, comment that UCC's own pleading contains citations to industry-wide data from private sector sources rather than from governmental sources.

subscribers, this agency and the public it serves, as well as on federal taxpayers in general. Our review of the evidence in this proceeding convinces us that retention of the cable television annual financial reporting requirements imposed under § 76.403 is a burden which neither this agency or its regulatees should continue to bear in the absence of clear public interest benefits. Indeed, we have not received any evidence to suggest that regulatory acquisition of this financial information under the present rules has proved material in previous cable regulatory endeavors and very little evidence to suggest that continued acquisition of this information through an industry-wide requirement is necessary in the context of the present regulatory environment or regulation in the foreseeable future. Moreover, if a regulatory need for industry-wide financial information arises, we will be able to obtain such information through less costly avenues such as private sector sources or special agency studies or analyses.

12. UCC contends that such financial information is necessary to show basic developmental trends within the industry, and that it is not available elsewhere. However, we believe that information about sudden or gradual trends, financial or otherwise, within the industry would be available from the private sector. Indeed, UCC's comments contain references to private sector sources concerning the projected growth of advertising revenues on cable systems over the next several years. In any event, to the extent that private sector information would not be available for our purposes, we can conduct special studies to obtain information required by any inquiry that may be before the Commission.

13. Moreover, while UCC maintains that such information is necessary in conjunction with regulatory proceedings such as the network/cable cross-ownership rule making proceeding⁶ and cable television franchise fee matters,⁷ our own regulatory experience indicates otherwise. For example, in both of these areas, we have tended to rely on other internal and external sources of information, primarily of an economic nature, rather than upon the information

contained in these financial forms.⁸ Thus, the data resulting from the cable television financial reporting requirement has not been a primary tool of regulation.⁹ Furthermore, in view of the deregulatory measures initiated and undertaken over the last few years, the need for this information is considerably less today than when this agency first embarked on cable television regulation.

14. Even assuming that we continued to believe that these requirements did serve some valid public interest purpose, we nevertheless would still have to assess whether that purpose was such that it outweighed the burdens placed on this agency and on its regulatees. In the *Notice*, at paragraph 5, we mentioned that approximately 3,000 annual financial reports were filed for approximately 8,600 community cable systems. By integrating the data supplied by cable operators on the efforts and costs involved in compliance with the above statistical information, we can gauge the overall burden to the industry in terms of compliance with this rule. For example, based upon information extrapolated from the comments, cable operators expend between two and ten hours per community system to comply with our reporting obligations. That is between 17,000 and 86,000 workhours spent per year for the entire industry. In terms of money, the same process yields an estimated yearly cost of compliance of \$4 million. While such estimates might appear relatively small, they are significant when compared to the minimal value of the information generated by the reporting requirement. In addition, these burdens will tend to fall most heavily on the smaller cable company. In this regard, we note that consistent with the purposes and aims of the *Regulatory Flexibility Act of 1980*, Pub. L. 96-354, we have an obligation to eliminate, to the extent possible, regulatory burdens imposed on small business entities.

15. Similarly, the cable financial reporting requirement exacts a toll on this agency in terms of staff resources. Approximately 5,000 staff hours are spent on an annual basis in the collection of this information and its integration into annual industry reports.

⁶ See, e.g., K. Gordon, J. Levy and R. Preece, *FCC Policy on Cable Ownership* (Staff Report, FCC Office of Plans and Policy), November 1981, as it relates to the cable-television broadcast network cross-ownership rule.

⁷ To the extent that UCC suggests that such information is important in individual franchise fee waiver requests, we believe that acquisition of this information on an individual basis as needed is considerably more efficient than imposition of industry-wide requirements for these purposes.

In view of the existence of other, more pressing public interest concerns in the communications area and in view of limited agency resources in handling these matters, we can ill-afford continued dedication of these resources to regulatory reporting requirements of dubious value to this agency and the public interest. For all of the foregoing reasons, we conclude that the existing annual financial reporting requirement for cable television systems and the form now utilized in connection with this requirement (FCC Form 326) should be eliminated.

16. On the basis of the record before us, we do not believe it would be appropriate to preempt the collection of financial data by state and local governments. As we indicated in the *Notice* in this proceeding, states and municipalities might consider the collection of this information necessary for their own regulatory purposes. Our decision on the continued collection of financial data is based on a balancing of the burdens of collection against the value of the data to the Commission. The record before us does not permit similar judgments with regard to the needs of local regulatory bodies.

IV. Regulatory Flexibility Analysis

17. Pursuant to relevant provisions of the *Regulatory Flexibility Act*, we have reviewed this action to determine if there will be a significant financial impact on a substantial number of small businesses. The comments in this proceeding suggest that adoption of our recommendation will reduce reporting and recordkeeping requirements on the part of cable television operators. The only possible adverse effect of eliminating the cable television financial reporting requirement at the federal level might be that state and local governments could react by imposing their own financial reporting requirements. This possibility, however, is quite speculative in nature and would not seem to outweigh the real and tangible benefits to all cable systems, and particularly small ones, of eliminating the Commission's existing financial reporting requirements.

18. Accordingly, it is ordered, that Section 76.403 of the Commission's Rules and Regulations as it relates to FCC Form 326 "Cable Television Annual Financial Report" is amended, effective September 2, 1983 as set forth in the attached Appendix.

19. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

⁸ See *Notice of Proposed Rule Making in CT Docket No. 82-434*, FCC 82-323, 91 FCC 2d 76 (1982).

⁹ See § 76.31 of the Rules regarding franchise fee waiver requests and *Memorandum Opinion and Order and Further Notice of Proposed Rule Making in Docket 21002*, FCC 79-228, 71 FCC 2d 909 (1979), relative to this agency's review of present limitations on franchise fee payments.

20. It is further ordered, that this proceeding is terminated.

21. For further information on this matter, contact Stephen A. Bailey, Mass Media Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 76—CABLE TELEVISION SERVICE

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 76.403 [Amended]

1. Section 76.403 is amended as follows:

a. The second sentence in Section 76.403 is amended by removing the following:

| | |
|----------------|-------------------------------------------------------|
| Financial unit | "Cable television annual financial report," Form 328. |
|----------------|-------------------------------------------------------|

b. The third sentence in § 76.403 is amended by removing the comma and the phrase "except for the Financial Unit Data, which shall be returned within 90 days after the end of the most recent fiscal year of said financial unit" immediately following the words "by the Commission".

[FR Doc. 83-23769 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 680

[Docket No. 30728-145]

Foreign Fishing and Western Pacific Precious Corals; Implementation of Fishing Management Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing the Fishery Management Plan for the Precious Corals Fishery of the Western Pacific Region (FMP). The proposed rule is revised to respond to public comments and to impose standard format requirements. The purpose of this FMP and its implementing regulations is to protect

coral from overexploitation and provide an opportunity for commercial harvesting.

EFFECTIVE DATE: September 29, 1983.

ADDRESS: A regulatory impact review is available from Alan W. Ford, Director, Southwest Region, 300 South Ferry, Terminal Island 90731.

FOR FURTHER INFORMATION CONTACT: Alan W. Ford (Regional Director, Southwest Region), 213-548-2575; Doyle E. Gates (Administrator, Western Pacific Program Office, Southwest Region), 808-955-8831.

SUPPLEMENTARY INFORMATION:

Background

The Western Pacific Fishery Management Council (Council) prepared the FMP for the Precious Corals Fishery in the fishery conservation zone (FCZ) off the coasts of American Samoa, Guam, and Hawaii. The final rules for the domestic and foreign fisheries implement the management measures in the FMP that (1) establish four categories of management areas, (2) establish optimum yields by management-area category, (3) require domestic fishermen to have permits to fish for corals, (4) allow foreign fishing in exploratory areas, and (5) require certain recordkeeping by foreign and domestic fishermen.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the FMP on May 20, 1980. Proposed regulations were published in the *Federal Register* on September 15, 1980 (45 FR 60957). A final environmental impact statement (EIS) was filed with the Environmental Protection Agency (EPA) on January 17, 1980 (45 FR 6472).

The management strategy has not changed from that presented in the proposed regulations. The FMP identifies the problem of managing a resource of unknown dimensions characterized by slow growth, low rates of mortality, and low rates of recruitment. The basic change from the proposed rule is one of format and clarification. The comments received during the review period and NOAA's responses are discussed below. Section 680.8, Vessel identification, was revised to incorporate recent U.S. Coast Guard requirements.

Responses to Public Comments

The State of Hawaii Department of Land and Natural Resources, the U.S. Coast Guard, the Department of Interior, the Hawaii Department of Planning and Economic Development, and the Governor of Guam submitted comments.

Comment: The FMP fails to provide a sound biological basis for management because it allows nonselective gear that is not as efficient as estimated in the FMP. Compounding the problem is incomplete knowledge of stock assessment, age-growth relationships, and recruitment. Implementation of the FMP should be suspended until actual efficiency data are collected for the dredge method of harvesting precious coral.

Response: This comment accurately states the problems of managing the precious coral fishery, but NOAA does not agree with the conclusion. Tangle net dredges are inefficient in the harvest of corals and knowledge of the resource is limited; however, there would be little opportunity to harvest corals or to increase knowledge of the resource without using these dredges.

The Council recognized and considered these problems in preparing the plan and adopted a conservative approach that will protect corals from overexploitation and provide an opportunity for commercial harvesting. Four categories of management areas are established and commercial activity is limited in each area depending upon the knowledge available about an area. One category of coral bed is "refugia," which are set aside to serve as baseline study areas and possible reproductive reserves. No coral harvesting is permitted on refugia beds.

The FMP encourages use of selective gear. When nonselective gear is allowed, the plan reduces the quota to 20 percent of the selective-gear quota for conditional beds. The permit and reporting requirements will provide the information needed to improve management of the coral resources. As information is obtained, determinations of maximum sustainable yield and optimum yield may be refined further and gear restrictions may be modified. Finally, if FMP implementation were suspended, domestic harvesting could proceed with no Federal regulation.

Comment: Section 680.6 of the proposed regulations for domestic fishermen does not require that logbooks be completed within a specific time period, which may hinder enforcement.

Response: The final regulations require that logbooks be completed by midnight of the day following the day in which the coral was taken.

Comment: The FMP includes black corals in the management unit, but the proposed rules exclude black coral from the definition of precious corals.

Response: The final regulations include black corals, which are found

principally in State waters. The only regulation for domestic fishermen is that they must report their catches of black coral. Black coral is a prohibited species for foreign fishermen.

Comment: The Coast Guard noted that the weights of coral logged in the daily cumulative catch log required by § 611.9(d) of the foreign fishing regulations will be wet weights, because it takes 24 hours to air-dry coral while the log must be completed within 12 hours of the end of the day. The relationship of wet to dry coral is unknown; therefore, the Coast Guard suggested that foreign vessels engaged in the coral fishery be exempted from the requirements of § 611.82(j) and that the regulations be revised to require the updating of logs within 24 hours of the end of a fishing day rather than "on a timely basis."

Response: The final rule adopts the suggestion.

Comment: The plan is an infringement of the State of Hawaii's jurisdiction over its archipelagic waters and may be inconsistent with Hawaii's coastal zone management program.

Response: NOAA determined that the FMP is consistent with the Hawaii Coastal Zone Management Plan and so informed the State on August 20, 1982. NOAA presumes State agency agreement because the State did not provide a response within the 45-day review period provided in the NOAA regulations implementing the Coastal Zone Management Act (CZMA) (15 CFR 930.41(a)). The Federal government does not recognize the State's claim of archipelagic jurisdiction. In approving the Hawaii Coastal Zone Management Program, the Assistant Administrator for the CZMA specifically found that the seaward portion of the State's coastal zone is the three-mile territorial sea. Furthermore, Hawaii's Precious Corals Regulation 41, which was in effect at the time of the approval of the Hawaii Coastal Zone Management Program, was not and has not been included in Hawaii's Coastal Zone Management Program; therefore the FMP need not be consistent with Regulation 41.

Comment: The Government of Guam recognized that information on the precious corals resource around Guam and the remaining Mariana Islands is very limited; the Governor recommended a stock assessment survey for the area.

Response: Since receipt of the Governor's letter, a resource assessment investigation of the Mariana Archipelago (RAIOMA) has been initiated by the National Marine Fisheries Service, Southwest Fisheries Center, out of the Honolulu laboratory.

Bathymetric surveys may locate potential corals habitat where test fishing may be conducted. Although other resources have a higher priority during the RAIOMA cruise, some promising areas may be targeted during the survey.

Classification

The Assistant Administrator has determined that the FMP and the implementing regulations comply with the national standards, other provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and other applicable laws.

The National Marine Fisheries Service prepared a regulatory impact review (RIR) which concludes that these regulations do not constitute a major rule under Executive Order 12291.

A final EIS was filed with the EPA on January 17, 1980, (45 FR 6472).

Logbooks and permits to fish for precious coral are required by these regulations. Under the Paperwork Reduction Act, the foreign reporting aspects of this rule (50 CFR Part 611) can be merged with existing Office of Management and Budget (OMB) collection number 0648-0075 (foreign fishing vessel reports); domestic permits (50 CFR 680.4) can be merged with OMB 0648-0097 (Federal fisheries permits); and domestic reporting (50 CFR 680.5) can be merged with OMB 0648-0016. No respondents to any of these requirements are expected at the present time. This action has been submitted to OMB for review.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 680

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: August 24, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 611 is amended and a new Part 680 is added as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.9, paragraph (d)(1) is revised to read as follows:

§ 611.9 Reports and recordkeeping.

(d) *Daily cumulative log.* (1) The operator of each foreign fishing vessel, except as otherwise provided in § 611.82(i) and § 611.90(e)(2), must maintain a daily cumulative catch log in English. This log must have recorded on a daily and a cumulative basis the round weight of all catches of all allocated species during the permit period. The operator must maintain the log aboard the vessel during the duration of the permit period. Information for each fishing area must be maintained on a separate page of the log.

3. A new § 611.82 is added to read as follows:

§ 611.82 Precious coral fishery.

(a) *Purpose.* This section regulates foreign fishing under a Governing International Fishery Agreement for precious corals within the fishery conservation zone (FCZ) seaward of Hawaii, Guam, and American Samoa.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) *Exploratory area* means the following permit areas in the FCZ outside the closed areas listed in § 611.82(g).

(i) Permit Area X-P-H. All coral beds seaward of the State of Hawaii.

(ii) Permit Area X-P-AS. All coral beds seaward of American Samoa.

(iii) Permit Area X-P-G. All coral beds seaward of Guam.

(2) *Precious Coral* means any of the following species of coral:

Pink coral (also known as red coral)

Corallium secundum

Pink coral (also known as red coral)

Corallium regale

Pink coral (also known as red coral)

Corallium laevis

Gold coral *Gerardia sp.*

Gold coral *Callogorgia gilberti*

Gold coral *Narella sp.*

Gold coral *Calyptrophora sp.*

Bamboo coral *Lepidisis olapa*

Bamboo coral *Acanella sp.*

Black coral *Antipathes dichotoma*

Black coral *Antipathes grandis*

Black coral *Antipathes ulex*

(3) *Regional Director* means the Southwest Regional Director, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731.

(4) *Selective gear* means gear that can be used to harvest coral selectively by differentiating as to type, size, quality, or other characteristics.

(c) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) **TALFF and reserve.** The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), the amounts of coral set aside as reserves, the estimated domestic annual harvest (DAH), and domestic annual processing (DAP) in exploratory areas are published in the **Federal Register** prior to the beginning of each fishing year. Current TALFF and JVP amounts are available from the Regional Director.

(3) **Determination of TALFF and reserves.** The quotas for each of the three exploratory areas (set forth in Table 1 to 50 CFR Part 680) will be held in reserve for harvest by vessels of the United States in the following manner:

(i) At the start of the fishing year (July 1), the reserve for each exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(ii) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(4) **Release of reserves.** The Secretary will release to TALFF for each exploratory area an amount of coral equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(5) The Secretary will publish in the **Federal Register** a notice of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) **Open season.** Foreign fishing authorized under this section may be conducted from the time that the reserve is released to TALFF until the national allocation has been reached. This fishery will be closed in accordance with § 611.15.

(e) **Prohibited species.** All species of fish over which the United States exercises fishery management authority and for which there is no applicable national allocation are prohibited species and will be treated in accordance with § 611.13. All black corals are prohibited species.

(f) **Open area.** Foreign vessels may engage in fishing for precious coral in the three exploratory areas in the FCZ seaward of Hawaii, Guam, and American Samoa, but not in those coral beds designated in § 611.82(g).

(g) **Closed areas.** The following precious coral beds are closed to all foreign fishing:

Coral Bed—Midpoint

(1) Ke-ahole Point, Hawaii, 19°46.0' N. latitude, 156°06.0' W. longitude;

(2) Makapuu, Oahu, Hawaii, 21°18.0' N. latitude, 157°35.5' W. longitude;

(3) Kaena Point, Oahu, Hawaii 21°35.4' N. latitude, 158°22.9' W. longitude;

(4) WestPac Bed, 23°18.0' N. latitude, 162°35.0' W. longitude;

(5) Brooks Banks, 24°06.0' N. latitude, 166°48.0' W. longitude; and

(6) 180 Fathom Bank, N.W. of Kure, 28°50.2' N. latitude, 178°53.4' W. longitude.

Each coral bed includes the area within two nautical miles of the midpoint.

(h) **Gear restrictions.** (1) No foreign vessel fishing for coral may use gear other than:

- (i) Dredges with tangle nets; or
- (ii) Selective gear.

(2) A foreign vessel may use only selective gear to harvest coral from the FCZ of the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

(i) **Collection, maintenance and reporting of data.** In addition to the requirements of § 611.9, each foreign fishing vessel must collect, maintain, or report on a timely basis accurate data relating to fishing operations as specified in this section. The requirement of § 611.9(d) that each vessel maintain a daily cumulative catch log is waived for vessels fishing for coral under this section. In lieu of that log, vessels must enter into the logbook provided to the vessel by the National Marine Fisheries Service by midnight of the day following the day on which the coral was taken, the information specified in paragraphs (i)(1)(i) through (1)(x) of this section. All submissions required by this section must be sent to the Regional Director, or, in the case of logbook data, must be hand delivered to the National Marine Fisheries Service observer (if an observer is on board the vessel) upon request. The following log and reports are required:

(1) Whenever a permitted vessel lands coral harvested under a permit, the permittee must within 72 hours mail to the Regional Director a copy of the log with complete harvest information for the coral sold or delivered including:

- (i) Name of vessel;
- (ii) Call sign of vessel;
- (iii) Permit number of vessel;
- (iv) Area fished by statistical area;
- (v) Average depth of water where the coral was harvested;
- (vi) Weight of coral harvested by species, to the nearest tenth of a kilogram (landed weight, air dried for at least 24 hours);
- (vii) Fishing effort in hours where the coral was harvested;
- (viii) Dates of harvest;
- (ix) Method of harvest;

(x) Observations that may be made about the habitat (current, bottom type, bottom topography, bottom slope);

(xi) Amount of coral sold by species;

(xii) Sale price;

(xiii) Date of sale; and

(xiv) Name(s) and address(es) of buyer(s).

(2) For any coral that is not sold within 72 hours of landing the permittee shall mail to the Regional Director within 72 hours of its sale the information specified in paragraphs (i)(1)(xi) through (i)(1)(xiv) of this section.

(3) **Annual report.** Each nation whose vessels engage in the precious coral fishery must submit by November 30 of the following fishing year annual catch and effort statistics as follows: (i) Catch in kilogram by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings: pink (red), gold, bamboo, other precious coral, and non-precious coral; and (ii) effort, in hours fished by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

(OMB control number: 0648-0075)

4. A new Part 680 is added to read as follows:

PART 680—WESTERN PACIFIC PRECIOUS CORALS

Subpart A—General Provisions

Sec.

- 680.1 Purpose and scope.
- 680.2 Definitions.
- 680.3 Relation to other laws.
- 680.4 Permits.
- 680.5 Recordkeeping and reporting.
- 680.6 Vessel identification.
- 680.7 Prohibitions.
- 680.8 Facilitation of enforcement.
- 680.9 Penalties.

Subpart B—Management Measures

- 680.20 Seasons.
- 680.21 Quotas.
- 680.22 Closures.
- 680.23 Size restrictions.
- 680.24 Area restrictions.
- 680.25 Gear restrictions.
- 680.26 Test fisheries (Reserved).

Authority: 16 U.S.C. 1601 *et seq.*

Subpart A—General Provisions

§ 680.1 Purpose and scope.

(a) The purpose of this part is to implement the Precious Coral Fishery Management Plan developed by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act. (Magnuson Act).

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the fishery conservation zone seaward of Hawaii, Guam, and American Samoa.

(c) For regulations governing fishing for precious coral by foreign vessels, see 50 CFR 611.82.

§ 680.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(d) Any operations at sea in support of or in preparation of any activity described in paragraphs (a) through (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

Land or Landing means bringing fish to shore or off-loading fish from a vessel.

Live coral means any precious coral that is free of holes from borers, and has

no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Non-precious coral means any species of coral other than those listed under the definition for *precious coral*.

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the designation, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Management area means the FCZ of the United States seaward of the State of Hawaii; the Territory of Guam, and the Territory of American Samoa.

Permit area is used to describe each precious coral bed in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(a) *Established beds.*

Makapuu (Oahu), Permit Area E-B-1, includes the area within a radius of 2.0 nautical miles of a point at 21°18.0' N. latitude, 157°35.5' W. longitude.

(b) *Conditional beds.* (1) *Ke-ahole Point (Hawaii), Permit Area C-B-1*, includes the area within a radius of 0.5 nautical miles of a point at 19°46.0' N. latitude, 156°06.0' W. longitude.

(2) *Kaena Point (Oahu), Permit Area C-B-2*, includes the area within a radius of 0.5 nautical miles of a point at 21°35.4' N latitude, 158°22.9' W. longitude.

(3) *Brooks Bank, Permit Area C-B-3*, includes the area within a radius of 2.0 nautical miles of a point at 24°06.0' N. Latitude, 166°48.0' W. longitude.

(4) *180 Fathom Bank, Permit Area C-B-4*, N.W. of Kure Atoll, includes the area within a radius of 2.0 nautical miles of a point at 28°50.2' N. latitude, 178°53.4' W. longitude.

(c) *Refugia.* *Westpac Bed, Permit Area R-1*, includes the area within a radius of 2.0 nautical miles of a point at

23°18.0' N. latitude, 162°35.0' W. longitude.

(d) *Exploratory areas.* (1) *Permit Area X-P-H* includes all coral beds, other than established beds, conditional beds, or refugia, in the FCZ seaward of the State of Hawaii.

(2) *Permit Area X-P-AS* includes all coral beds, other than established beds, conditional beds, or refugia, in the FCZ seaward of American Samoa.

(3) *Permit Area X-P-G* includes all coral beds, other than established beds, conditional beds, or refugia, in the FCZ seaward of Guam.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government, or any entity of any such government.

Precious coral means any of the following species of corals:

Pink coral (also known as red coral),

Corallium secundum

Pink coral (also known as red coral),

Corallium regale

Pink coral (also known as red coral),

Corallium laauense

Gold coral, *Gerardia sp.*

Gold coral, *Callogorgia gilberti*

Gold coral, *Narella sp.*

Gold coral, *Calyptrophora sp.*

Bamboo coral, *Lepidisis olapa*

Bamboo coral, *Acanella sp.*

Black coral, *Antipathes dichotoma*

Black coral, *Antipathes grandis*

Black coral, *Antipathes ulex*

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

State means the State of Hawaii, the Territory of Guam, and the Territory of American Samoa.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested coral means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 680.3 Relation to other laws.

This part recognizes that any State law pertaining to vessels registered under the laws of that State, including any State landing laws, which is consistent with the Precious Coral Management Plan, will continue to have force and effect respecting fishing activities addressed herein.

§ 680.4 Permits

(a) *General.* (1) Any vessel of the United States fishing for, taking, or retaining precious coral in the management area must have a permit issued under this section.

(2) Each permit will be valid for fishing only in the permit area specified in the permit. Permit areas are described in § 680.2.

(3) No more than one permit will be valid for any one vessel at any one time.

(4) No more than one permit will be valid for any one person at any one time.

(5) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit issued under this section.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Each applicant must supply the following information to the Regional Director when applying for a permit. Each application must be signed by the vessel owner or operator and contain the following information:

- (i) The applicant's name, mailing address, and telephone number;
- (ii) The owner's name, mailing address, and telephone number;
- (iii) The operator's name, mailing address, and telephone number;
- (iv) The name of the vessel;
- (v) The vessel's U.S. Coast Guard documentation number or State license number;
- (vi) The radio call sign of the vessel;
- (vii) The home port of the vessel;
- (viii) The engine horsepower of the vessel;

(ix) The approximate fish-hold capacity of the vessel;

(x) The type and quality of fishing gear used by the vessel;

(xi) The permit area in which the applicant proposes to fish;

(xii) Whether the application is for a new permit or a renewal; and

(xiii) The number and expiration date of any prior permit for the vessel issued under this section.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days prior to the effective date of the change.

(e) *Issuance.* (1) Within 60 days after receipt of a properly completed application the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire on June 30 following the effective date of the permit.

(g) *Renewal.* An application for a renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit which has been substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit will not be considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for coral in the FCZ. Any permit issued under this section must be displayed for inspection upon request of any authorized officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this section. As specified in that subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or this

part, or if a civil penalty or criminal fine imposed under the Magnuson Act and pertaining to such a vessel is not paid.

(OMB control number: 0648-0097)

§ 680.5 Recordkeeping and reporting.

(a) *Logbook.* The operator of any fishing vessel fishing for precious coral subject to this part must—

(1) Maintain on board the fishing vessel, while fishing for precious coral, an accurate and complete fishing logbook in the required format supplied by the Regional Director, recording all information specified in paragraph (b) of this section with all information entered by midnight of the day following the day on which the coral was taken;

(2) Make the fishing logbook available for inspection by an authorized officer or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspection;

(3) Keep the fishing logbook one year after the date of the last entry in the logbook; and

(4) Within 72 hours of each landing of precious coral, submit to the Regional Director a copy of the log sheet(s) pertaining to that precious coral.

(b) *Information.* Fishing logbooks must contain the following information for all precious coral taken under this part:

(1) *Vessel information.*

- (i) Name of vessel;
- (ii) Call sign of vessel; and
- (iii) Permit number of vessel.

(2) *Fishing information.*

- (i) Date of harvest;
- (ii) Fishing effort in hours;
- (iii) Method of harvest;
- (iv) Area fished;
- (v) Depth of water;
- (vi) Weight of coral harvested, by

species, to the nearest tenth of a kilogram (landed weight, air dried for at least 24 hours); and

(vii) Observations that may be made about the habitat (current, bottom type, bottom topography, bottom slope, proximity to land, etc.).

(3) *Sale information.*

- (i) Amount of coral sold (by species);
- (ii) Sale price;
- (iii) Date of sale;
- (iv) Name(s) and address(es) of buyer(s); and

(4) Any other information specified in the permit.

(OMB control number: 0648-0016)

§ 680.6 Vessel identification.

(a) *Permit number.* Each fishing vessel subject to this part must display its permit number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so

as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The permit number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height for fishing vessels of 65 feet in length or longer and at least ten inches in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part must—

(1) Keep the displayed permit number legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the permit number from an enforcement vessel or aircraft.

§ 680.7 Prohibitions.

(a) It is unlawful for any person to—

(1) Use any vessel to fish for, take, or retain precious coral in the management area unless a permit has been issued for that vessel and area as specified in § 680.4 and that permit is on board the vessel;

(2) Fish for, take, or retain any species of precious coral in the management area:

(i) By means of gear or methods prohibited by § 680.25;

(ii) In refugia specified in § 680.24;

(iii) In a bed for which the quota specified in § 680.21 has been attained; or

(iv) In violation of any permit issued under § 680.4;

(3) Take and retain or possess on fishing vessels any pink coral from the Makapuu Bed (Permit Area E-B-1), Keahole Point Bed (Permit Area C-B-1), or Kaena Point Bed (Permit Area C-B-2) which is less than the minimum height specified in § 680.23.

(4) Falsify or fail to make, keep, maintain, or submit any logbook or other record or report required by § 680.5;

(5) Fail to affix and maintain vessel markings, as required by § 680.6;

(6) Fail to comply immediately with enforcement and boarding procedures specified in § 680.8;

(7) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of precious coral which was taken in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act;

(8) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other

regulations issued under the Magnuson Act;

(9) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (e) of this section;

(10) Resist a lawful arrest for any act prohibited by this part;

(11) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person by an authorized officer, knowing that such other person has committed any act prohibited by this part; or,

(12) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested coral to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under § 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested coral of the species concerned;

(13) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(b) It is a rebuttable presumption that any precious coral found on board a fishing vessel in the management area was caught and retained in violation of this part. The presumption can be rebutted by showing that—

(1) A valid permit was issued for the vessel, which was operating under the terms of the permit; or

(2) The coral originated outside the management area through receipts of purchase, invoices, or other documentation.

§ 680.8 Facilitation of enforcement.

(a) *General.* The operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the vessel, its gear, equipment and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of the fishing vessel shall be alert for signals conveying enforcement instructions. The VHF-FM radiotelephone is the normal method of communicating between vessels. Listen to the VHF-FM channel 16 (emergency channel) for instructions to shift to another VHF-FM channel and receive boarding instructions. Visual methods or loudhailer may be used if the radio does not work. The following signals extracted from U.S. Hydrographic Office

publication H.O. 102 International Code of Signals, may be communicated by flashing light or signal flags:

(1) "L" meaning "You should stop your vessel instantly."

(2) "SQ3" meaning "You should stop and heave-to; I am going to board you."

(3) "AA AA AA etc." meaning "Call for unknown station or general call." The operator should respond by identifying his vessel by radio, visual signals or illuminating his official number.

(4) "RY-CY" meaning "You should proceed at slow speed. A boat is coming to you."

(c) *Boarding.* The operator of a vessel signaled to stop or heave-to for boarding shall—

(1) Stop immediately and lay to or maneuver in such a way as to allow the boarding party to come aboard; and

(2) Take such other actions as necessary to ensure the safety of the boarding party.

§ 680.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to 50 CFR Part 620 (Citations) and 15 CFR Part 904 (Civil Procedures) and other applicable law.

Subpart B—Management Measures

§ 680.20 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a two-year fishing period that begins July 1 and ends June 30 two years later.

§ 680.21 Quotas.

(a) The quotas limiting the amount of precious coral that may be taken in the management area during the fishing year are listed in Table 1 of this section. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

TABLE 1.—QUOTAS FOR PERMIT AREAS

| Name of coral bed | Type of bed | Harvest quota * | Number of years | Gear restrictions * |
|-------------------|-------------|----------------------|-----------------|---------------------|
| Makapuu | Established | Pink coral—2,000 kg. | 2 | S |
| | | Gold coral—600 kg. | 2 | S |
| | | Bamboo coral—600 kg. | 2 | S |
| Keahole Point | Conditional | Pink coral—67 kg. | 1 | S |

TABLE 1.—QUOTAS FOR PERMIT AREAS—
Continued

| Name of coral bed | Type of bed | Harvest quota * | Number of years | Gear restrictions # |
|------------------------------|---------------|---------------------------------------------------------------|-----------------|---------------------|
| Kaena Point | Conditional | Gold coral—20 kg. | 1 | S |
| | | Bamboo coral—17 kg. | 1 | S |
| | | Pink coral—67 kg. | 1 | S |
| | | Gold coral—20 kg. | 1 | S |
| Brooks Bank * | Conditional | Bamboo coral—17 kg. | 1 | S |
| | | Pink coral—17 kg. | 1 | N |
| | | Gold coral—133 kg. | 1 | N |
| | | Bamboo coral—111 kg. | 1 | N |
| 180 Fathom Bank * | Conditional | Pink coral—222 kg. | 1 | N |
| | | Gold coral—67 kg. | 1 | N |
| | | Bamboo coral—56 kg. | 1 | N |
| | | Zero (0 kg). | 1 | N |
| Westpac Bed | Refugia | Zero (0 kg). | 1 | N |
| Hawaii, American Samoa, Guam | Exploratory * | 1,000 kg (all species combined except black corals) per area. | 1 | N |

* There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§ 680.5). State regulations on black coral harvesting are not superseded by this part.

Only 1/2 the indicated amount is allowed if nonselective gear is used, that is the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when $S + 5N = Q$, where S=selective harvest amount, N=nonselective harvest amount and Q=total harvest quota, for any single species on that bed.

* Only selective gear may be used in the FCZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.

S=Selective gear only; N=Nonselective or selective gear.

*No authorized fishing for coral.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) The Secretary will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) The Secretary will publish in the *Federal Register* a notice of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 680.22 Closures.

(a) *Determinations of closure and field orders.* If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or of the two-

year fishing period at Makapuu bed, the Secretary will issue a field order closing the bed involved by publication of a notice in the *Federal Register*, and through appropriate news media. Such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 680.23 Size restrictions.

Pink coral harvested from the Makapuu bed (E-B-1), the Keahole Point bed (C-B-1), and the Kaena Point bed (C-B-2), must have attained a minimum height of ten inches. There are no size limits for precious coral from other beds or other species.

§ 680.24 Area restrictions.

Fishing for coral on the WestPac bed is not allowed. The specific area closed to fishing is all waters within a 2 nautical mile radius of the midpoint of 23° 18.0' N. latitude; 162° 35.0' W. longitude.

§ 680.25 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the FCZ of the main Hawaiian Islands, i.e., south and east of a line midway between Nihoa and Nihoa Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and from exploratory areas other than the FCZ off the main Hawaiian Islands.

§ 680.26 Test fisheries. [Reserved]

[FR Doc. 83-23783 Filed 8-29-83; 8:45 am]

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Proposed Rules

Federal Register

Vol. 48, No. 169

Tuesday, August 30, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 651

Acquisition of Real Property Under Federally Assisted Programs

AGENCY: Soil Conservation Service, USDA.

ACTION: Proposed rule; resubmission.

SUMMARY: The Soil Conservation Service (SCS) published a proposal on August 27, 1982, in the *Federal Register*, (47 FR 37907) to revise and update 7 CFR Part 651 to correspond with related regulations. Some commenters suggested that this part be completely revised to remove procedural detail and other largely explanatory language. Therefore, SCS proposes to revise this part to cover only the basic requirements on the acquisition of real property under federally assisted programs administered by SCS.

DATE: Comments are due no later than October 31, 1983.

ADDRESS: Written comments should be addressed to: Deputy Chief for Administration, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013 (202) 447-6297.

FOR FURTHER INFORMATION CONTACT: Wayne F. Maresch, Director, Administrative Services Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, or telephone (202) 447-5111.

SUPPLEMENTARY INFORMATION: All comments on the first proposal were considered in developing this revision. The revision sets forth only the basic requirements imposed by SCS manuals, watershed or measure plans, or grant documents or contracts. The changes agree or are correlated with, or referenced to the U.S. Department of Agriculture Uniform Federal Assistance Regulations, 7 CFR Part 3015. These changes are being made to conform with

5 U.S.C. 552, which provides that substantive rules of general application be published in the Code of Federal Regulations.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and it is determined that this proposed rule is not a "major rule." It is determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices to consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The revised rule imposes no new substantive requirements on programs involving technical and financial assistance in which participation is voluntary. Thus, the revised rule will not impose an unnecessary regulatory, information or compliance burden on small businesses, organizations, or governmental jurisdictions as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

List of Subjects in 7 CFR Part 651

Flood prevention, Grant programs—natural resources, Soil conservation, Water resources, Administrative practice and procedure.

Dated: August 18, 1983.

Peter C. Myers,
Chief, Soil Conservation Service.

Accordingly, the Soil Conservation Service proposes to revise the table of contents and text of 7 CFR Part 651 to read as follows:

PART 651—ACQUISITION OF REAL PROPERTY UNDER FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.

651.1 Purpose and scope.

651.2 [Reserved.]

Subpart B—SCS Federal Financial Assistance Not Authorized for Real Property Acquisition

Sec.

651.12 Criteria for determining real property needed.

651.13 Induced flooding requirements.

651.14 Duration of real property rights.

651.10 Responsibilities of sponsors.

651.11 Responsibilities of SCS.

Subpart C—SCS Federal Financial Assistance Authorized for Real Property Acquisition

651.20 General.

651.21 Cost-sharing arrangements.

651.22 Real property rights needed.

651.23 Evidence of title.

Subpart D—Other Land Treatment Programs

651.30 Conservation operations.

651.31 Watershed Protection and Flood Prevention Program.

651.32 Emergency watershed protection.

651.33 Great Plains Conservation Program.

651.34 Rural Abandoned Mine Program.

Authority: 7 CFR 2.62.

Subpart A—General

§ 651.1 Purpose and scope.

(a) This part sets forth the regulations on real property acquisition and related actions under Federal assistance programs administered by the Soil Conservation Service (SCS). Real property acquisition includes the acquisition of real property rights and interests, water rights, mineral or other subsurface rights, and clearances and permits required by Federal, State, or local laws, ordinances and regulations.

(b) This part relates to 7 CFR Part 21 which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655). Also, this part relates to 7 CFR Part 3015 which implements the Uniform Federal Assistance Regulations with regard to the real property aspect of grants and cooperative agreements.

(c) The principal purpose of these published regulations is to set forth uniform basic requirements on the acquisition of real property that apply to sponsors of projects when SCS furnishes financial assistance. The term "sponsors" means an entity legally organized under state law, or an Indian tribe or tribal organization which has the authority to carry out the project.

§ 651.2 [Reserved]**Subpart B—SCS Federal Financial Assistance not Authorized for Real Property Acquisition****§ 651.10 Responsibilities of sponsors.**

One or more of the project sponsors are to be responsible for acquiring real property rights and interests and taking related actions needed for the planning, investigation and survey, installation, and operation and maintenance of project measures to be installed with Federal financial assistance. This includes:

(a) Complying with all applicable Federal, State, and local laws, ordinances and regulations pertaining to the real property acquisition and project measures installation.

(b) As required by the program legislation, paying all costs associated with acquiring or failing to acquire real property and taking related actions.

(c) Submitting proposed real property documents, and proposed special provisions to be included in such instruments, to SCS for approval except for documents to be used in eminent domain or other court proceedings.

(d) Assuring and certifying to SCS before SCS financial assistance is furnished that adequate real property rights have been acquired and that other related actions have been taken.

(e) Complying with the requirements of the USDA, Farmers Home Administration, when their loans are involved in the project.

§ 651.11 Responsibilities of SCS.

(a) SCS is to determine for each project measure involving SCS financial assistance:

(1) The minimum area for which real property rights are to be acquired;

(2) The minimum interest that is needed in connection with the various features of the measures;

(3) Known existing structures and improvements that will be affected by the installation of the measure;

(4) routes of ingress and egress when needed; and

(5) Other similar physical features.

(b) This determination is to be set forth in a real property work map developed by SCS and furnished to sponsors. This map is to serve as a basis for sponsors to determine the actual real property rights needed for the project measure, and to acquire such rights.

§ 651.12 Criteria for determining real property needed.

(a) *Structural measures.* The minimum surface areas and any subsurface or other rights needed for the installation, operation and maintenance and

inspection of project measures. For dams, the real property rights and interests include, but are not necessarily limited to, structural features, reservoir, spillway, and other areas, both upstream and downstream, which will be adversely affected by the changed water flow characteristics. For channels, the real property rights and interests include, but are not necessarily limited to, areas needed for the installation, inspection, design, operation and maintenance, ingress and egress, disposal and diversion of water, environmental protection features, and areas which will be adversely affected by changed streamflow or induced flooding.

(b) *Nonstructural measures.* In flood plain acquisition, the real property rights or restrictions are to be sufficient and adequate to provide a floodway or to protect the land from development, and to provide for any anticipated land use changes. Any existing structures and improvements to be relocated from the flood plain are to be identified.

§ 651.13 Induced flooding requirements.

Any structural measure installed with SCS financial assistance that may induce flooding because of changed waterflow characteristics must meet the following requirements:

(a) *Railroads.* Railroads that are to remain in use may not be flooded.

(b) *Roads.* Highways and public roads may not be flooded unless such flooding is authorized by State or local law, ordinance or other legal authority.

(c) *Dwellings.* All buildings for human habitation, including basements and related structures, may not remain below the flowage line, unless such structures are floodproofed or otherwise protected from damage.

(d) *Buildings other than dwellings.* When requested by the sponsor and approved by SCS, certain buildings and other structures may remain in the flowage area if they and their contents will not be substantially damaged by flooding, and if flooding will not cause a hazard to human life or to building contents.

(e) *Other.* Water sources such as wells or springs and burial sites such as cemeteries and private family plots may be flooded only as authorized by State and local laws, ordinances or regulations. See 7 CFR Part 656 for the regulations governing archeological resources and historical sites or monuments.

§ 651.14 Duration of real property rights.

(a) When project measures require operation and maintenance after installation, and the operation and

maintenance is to be performed by someone other than the landowner, the acquired rights must extend through a reasonable period for planning, installation, and:

(1) The evaluated life of the project measure or the life of project measures that are economically evaluated as a unit; or

(2) The useful life of project measures for land conservation of land use.

(b) When project measures do not require operation or maintenance, or the operation and maintenance is to be performed by the landowner, the rights needed for the planning and installation of the measure may be obtained by permit.

(c) This section provides for minimum real property rights required by SCS. Since the useful life of the project may exceed its evaluated life, sponsors may wish to acquire real property rights for a longer period.

Subpart C—SCS Federal Financial Assistance Authorized for Real Property Acquisition**§ 651.20 General.**

This subpart sets forth the additional requirements on real property acquisition when SCS financial assistance is authorized in the acquisition of real property.

§ 651.21 Cost-sharing arrangements.

(a) The amount of Federal financial assistance is to be established in a project plan. The evaluation of the property rights or interests is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601-4655), as implemented by 7 CFR Part 21.

(b) The values determined are to be computed in accordance with the following to determine the amount of the SCS financial assistance:

(1) When rights are acquired by negotiation, the SCS share of cost is computed on the basis of the lesser of the price paid by the sponsor or the just compensation value.

(2) When rights are acquired by the eminent domain process, the SCS share of the cost is computed on the basis of the court award. However, if SCS considers the award excessive and the sponsors do not exercise any appeal rights that may be available, SCS will establish a just compensation value for payment purposes.

(3) When real property interests are donated by sponsors or non-federal third parties (other than sponsors), the in-kind values will be established as set

forth in 7 CFR Part 3015 (§§ 3015.50-3015.58).

(4) The real estate appraisal and review required by 7 CFR Part 21 will be cost shared at the same rate as acquisition of the real property rights.

§ 651.22 Real property rights needed.

When SCS cost sharing is authorized by program legislation for recreation or fish and wildlife purposes in a water resource improvement or development, the following real property interest requirements apply:

(a) Fee simple title is to be obtained when privately-owned land is involved.

(b) Fee simple title is preferred when non-federal public land is involved; however, perpetual easement rights are acceptable.

(c) As a minimum, easement rights are to be obtained for road rights-of-way for access.

(d) As a minimum, easement rights are to be obtained for public utilities that serve the improvement or development.

§ 651.23 Evidence of title.

SCS approval of the title evidence is required for all real property acquisitions before financial assistance may be provided.

Subpart D—Other Land Treatment Programs

§ 651.30 Conservation operations.

Land users who receive technical assistance on conservation practices are responsible for obtaining the real property rights necessary to carry out such practices.

§ 651.31 Watershed Protection and Flood Prevention Programs.

Land users are to have control of the land units to be treated for the contract period by ownership or by documented leasehold interest.

§ 651.32 Emergency watershed protection.

Sponsors are responsible for acquiring real property rights and interests needed for installation of emergency measures.

§ 651.33 Great Plains Conservation Program.

See 7 CFR Part 631.

§ 651.34 Rural Abandoned Mine Program.

See 7 CFR Part 632.

[FR Doc. 83-23742 Filed 8-29-83; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM83-71-000]

Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its rules to make inoperative the portion of any minimum commodity bill provision on file in any rate schedule for the sale of natural gas which provides for the recovery of purchase gas costs, fuel costs, or other variable costs. Under the proposal, future tariffs providing for such recovery would be rejected. The proposal, if implemented, is intended (1) to prevent customers from having to pay for natural gas they do not need, (2) to enhance competition, and (3) thus, to encourage lower natural gas prices.

DATE: Comments are due on September 29, 1983.

ADDRESS: Comments must be filed with the Office of the Secretary, Room 3110, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Christine P. Benagh, Office of Commissioner Richard, 825 N. Capitol Street NE., Washington, D.C. 20426, (202) 357-8383;

Wayne Guest, Allocation and Rate Design Branch, Office of Producer and Pipeline Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20426, (202) 357-9398.

SUPPLEMENTARY INFORMATION:

Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions; Docket No. RM83-71-000.

Issued August 25, 1983.

I. Introduction

In order to encourage lower acquisition costs for gas supplies through competition and to ensure that natural gas purchasers are not required to pay their pipeline suppliers when certain costs are not incurred, the Federal Energy Regulatory Commission proposes to amend its rules. We intend to eliminate the purchase gas cost and all other variable costs (*i.e.*, those costs which vary with the sales levels or the level of pipeline throughput or both) from the minimum commodity bill provisions in gas tariffs of natural gas

pipelines to the extent that they permit recovery of costs that are not incurred, since the imposition of such payments may constitute unjust and unreasonable rates.

II. Background

Interstate natural gas pipeline companies are entitled to a reasonable opportunity, but not a guarantee, of recovering their prudently incurred costs. One tariff provision used by many pipelines to assure recovery of some portion of costs is the minimum commodity bill. Such provisions generally require the purchaser to pay the full commodity charge for a specified percentage of contracted quantities whether or not the specified amount of gas is actually taken. Frequently, the specified minimum purchase obligation is quite high; for example, they range from 66 2/3 percent to more than 90 percent of contracted quantities. To understand the Commission's concern evidenced in the present Notice of Proposed Rulemaking, some detailed background may be helpful.

A. Minimum Bills and Minimum Commodity Bills

A minimum commodity bill should be distinguished from the minimum obligation which consists of the monthly demand charge. Demand charges provide only for the recovery of fixed costs, *i.e.*, those costs which do not vary with the level of pipeline usage or throughput. Debt costs (principle and interest), return of and on equity, and associated income taxes are major typical elements of pipelines' fixed costs.

Since fixed costs are by definition incurred regardless of the level of customer purchases, use of a minimum charge to recover some portion of such costs may be appropriate in many instances.¹

Variable costs by contrast are incurred in proportion to throughput or level of usage. The greatest percentage of variable costs now incurred by interstate pipelines are purchased gas costs. For example, in 1981, purchased gas costs were roughly 90 percent of all operating and maintenance expenses of all Class A and B interstate pipelines filing F.E.R.C. Form 2.² They also

¹ Of course, to the extent that a pipeline is effectively guaranteed recovery of all of its fixed costs—including return on equity—it may tend to lessen efforts to minimize unit costs by maximizing sales or transportation. See Tennessee Gas Pipeline Co. 21 F.E.R.C. ¶61,004 (1982).

² E.L.A., *Statistics of Interstate National Gas Pipeline Companies* (1982).

represented roughly 75 percent of the pipeline's total costs.

B. The Role of Minimum Commodity Bills in Ratemaking

The Federal Power Commission identified three ratemaking functions, one or more of which might justify a minimum commodity bill:²

- **Fixed cost recovery.** In the landmark case in which the Commission considered approval of a minimum commodity bill, it was accepted that a pipeline is entitled to recover its cost of service plus a reasonable return, comprised of prudent fixed and variable costs. The past attempts of the Commission to ensure that each customer class bears its fair cost burden were taken into account. Traditionally, the allocation of costs among customer classes has required the use of various formulae: some for example, were intended to account fairly for the fixed costs related to serving off-peak customers;³ others were intended as pure market signals to depress demand during times of curtailment.⁴ To the extent that a given formula which shifts fixed costs to the commodity component is coupled with a minimum commodity bill, the pipeline is guaranteed recovery of the amount covered by the minimum commodity bill (in addition to the recovery of the demand charge), even if sales or throughput are lower than the volumes used to design the rates.⁵
- **Equitable cost recovery.** Where a given pipeline is the sole supplier to some customers while only one of several suppliers to another customer (the "partial requirements" customer), the potential exists for the partial requirements customer to "swing" its purchases among its varying suppliers. By sharply decreasing its purchases, a partial requirements customer might force "captive" or

single-supplier customers to shoulder a suddenly larger share of pipeline gas acquisition costs. A minimum commodity bill for partial requirements customers tends to discourage this by forcing these customers to pay the full commodity charge for specified volumes regardless of lower takes. When a pipeline is designed, the size, the compression, the route, and the gas purchase arrangements depend upon the customer requirements which the pipeline expects to serve. The pipeline—and the pipelines' captive full requirement customers—rely upon the representations of those customers with alternative sources of gas to shoulder their share of the cost of service. Customers who are capable of "swinging" on the system generally recognize that their willingness to bear their fair share of the fixed costs (depreciation, operation and maintenance, taxes, return, etc.) is the necessary predicate to having reliable gas service when they wish to take gas from the system.⁷

- **Take-or-pay recovery.** To the extent a pipeline is subject to take-or-pay obligations with its supplying producers, the associated carrying costs, when prudently incurred, constitute a fixed minimum obligation.⁸ A minimum commodity bill might be used to assure recovery of this particular type of fixed costs and indeed might be structured so as to allocate these costs equitably among customers.⁹

The interplay of the fixed cost recovery objective and the equitable distribution of costs among pipeline customers was well articulated in a 1968 decision:¹⁰

Regulation of the gas industry is basically one of costing, and more specifically the allocation of fixed costs among utility customers. Since most cost of service elements for transmission facilities are fixed cost elements which simultaneously serve all customers, equitable allocation of fixed costs among customers is usually accomplished by a two-part rate: a demand charge and a commodity charge. In the natural gas

industry, unlike the electric industry, by and large, some of the fixed costs are rolled into the commodity charge so that customers will contribute additional amounts to the fixed costs in direct proportion to their overall use of the facilities, since in part customers with the highest use derive the greatest benefits from facilities.

A partial requirements or minimum commodity billing charge serves the same cost recoupment function as the demand charge. It also protects the interests of the existing customers of a pipeline * * *. Thus, distributor customers seeking a second source of supply from a second pipeline which is reasonably available geographically, who can avoid partial requirements or minimum commodity billing charges, pass an unfair share of the costs of expansibility to other distributor customers not so favorably situated geographically. If an existing customer transfers load to another supplier, its share of the fixed costs must then be borne by the remaining customers of the original suppliers * * *.

A partial requirements [i.e., minimum commodity bill] schedule is the regulatory mechanism for achieving a public interest compromise between the objective of cheaper gas costs to particular customers, and the conflicting objective of cheap gas costs to all customers.

C. Minimum Commodity Bills and the Overrecovery of Variable Costs

Most minimum commodity provisions do not include a make-up provision.¹¹ In this respect they differ pointedly from typical producer-to-pipeline take-or-pay provisions, where a five year make-up provision is the norm.

The absence of a make-up period creates a serious possibility of overrecovery by the pipeline. Such overrecovery would result, for example, when the supplying pipeline received minimum commodity bill payments from its customers (which include full payment for purchased gas costs) and the pipeline itself was not required to either purchase the gas volumes or make take-or-pay prepayments.¹²

It was precisely this situation which led the Commission just two years ago to order one pipeline to include a one-year make-up provision in all of its resale tariffs.¹³ The Commission explained that:¹⁴

¹¹ Cf. Great Lakes Gas Transmission Co., 15 F.E.R.C. ¶61,161 (1981).

¹² Indeed for jurisdictional contracts, a five year make-up provision was required by the Commission regulations, 18 CFR § 154.103 (1982). The absence of such a provision could result in the disallowance of recovery of any carrying costs associated with such take-or-pay costs.

¹³ Great Lakes Gas Transmission Company, 15 F.E.R.C. ¶61,161 (1981).

¹⁴ *Id.* at 61,384-385.

² Atlantic Seaboard Corp., 38 F.P.C. 91, 95 (1967), *aff'd* *sub nom.* Atlantic Seaboard Corp. v. F.P.C., 336 F.2d 942 (D.C. Cir. 1964), *aff'd sub nom.* Atlantic Seaboard Corp. v. F.P.C., 404 F.2d 1268 (D.C. Cir. 1968). It should be noted that these three factors were not, in fact, established in *Lynchburg* nor found to exist by the Commission in *Seaboard*.

³ Atlantic Seaboard Corp., 11 F.P.C. 43 (1952); *Natural Gas Co.*, 11 F.P.C. 123 (1952), *aff'd sub nom.* State Corp. Comm. of Kansas v. F.P.C., 206 F.2d 690 (6th Cir. 1953), *cert. denied*, 346 U.S. 922 (1954).

⁴ United Gas Pipe Line Co., 50 F.P.C. 1348 (1973), *reh. denied*, 51 F.P.C. 1014 (1974), *off's sub nom.* Consolidated Gas Supply Corp. v. F.P.C. 520 F.2d 1176 (D.C. Cir. 1975).

⁵ In recent years, project financing has assured that lenders will recover the costs of constructing and operating new transportation pipelines, but not necessarily in the commodity component. See *Ozark Gas Transmission Sys.*, 16 F.E.R.C. ¶ 61,099 at 61,195-197, *reh. denied*, 17 F.E.R.C. ¶ 61,024 (1981); *Trailblazer Pipeline Co.*, 18 F.E.R.C. ¶ 61,244 (1982).

⁷ The anticompetitive aspects of this aspect of minimum commodity bills is discussed by Judge Fahy in *Lynchburg Gas Co. v. F.P.C.*, 336 F.2d 942, 946-947 (D.C. Cir. 1964).

⁸ See 18 CFR Part 165 (1983).

⁹ While discussed by the Commission in *Atlantic Seaboard* as a separate factor which might justify a minimum commodity bill, the existence of producer take-or-pay prepayment obligations, appears as just one particular example of a fixed cost which must be equitably recovered among customers. 38 F.P.C. 91, 95 (1967).

¹⁰ *Id.* at 98-99. [Commissioner Carver, dissenting, arguing against the "net market loss test" then in vogue for analyzing when to permit interpipeline competition and in favor of rate design changes].

A sale for resale minimum bill provision, like the transportation service minimum bill provision, serves to limit a pipeline's underrecovery of capital or fixed costs. However, the Commission believes that due to the inclusion of the cost of purchased gas in the computation of Great Lakes' resale service minimum bill, there is a possibility of overrecovery of costs. The concern regarding purchased gas costs arises because Great Lakes is able to reduce its takes of gas from TransCanada without triggering the minimum bill provision in its Canadian contracts. Thus, Great Lakes did not incur any purchased gas costs as a result of Michigan Consolidated taking less than 75 percent of the contract quantity.

There, the Commission directed the insertion of a make-up provision to prevent unjustified overpayments to the pipeline. While requiring such a make-up provision on a generic basis might be one alternative to the instant Notice, the Commission believes that removing variable costs altogether from minimum commodity bill provisions may be preferable. This is because current market conditions may continue for some time so that establishing a one-year or even two-year make-up period might be of little utility or benefit. Furthermore, while a regulatory requirement for some make-up provision may reduce the potential for an unjust recovery of variable costs, it may not eliminate it in today's market. Moreover, the question remains of whether there is any sound regulatory purpose for allowing pipelines to receive payments through a minimum commodity bill for costs which are not incurred. To the contrary, inclusion of variable costs in these provisions may unjustifiably prevent customers subject to them from obtaining gas from cheaper sources. The Commission requests comments on the above issues and directs commenters to respond with specificity regarding any date, relevant to their companies or suppliers, which underlie their positions. The weight given by the Commission to comments will reflect the supporting factual data submitted with such comments.

D. Minimum Commodity Bills Today

The shrinking gas markets of the present have been created by a combination of factors: natural gas price increases, increased availability and declining prices of oil supplies, economic recession, conservation and fuel switching. The Natural Gas Policy Act of 1978, which permitted most natural gas prices to rise substantially spurred increased drilling activity. The NGPA also increased the availability of gas supplies to the interstate market by enhancing the movement into that

market of surplus higher-priced supplies from the intrastate markets.

The rapidly increasing cost was also pushed by the need to acquire more supplies. The life of reserves attached to most pipelines is relatively short, and the pipelines consider it imperative to maintain aggressive gas acquisition programs in order that future markets might be served. In addition, the 1970s were marked by severe natural gas shortages so that the competition for newly available supplies was often fierce.

It should also be remembered that the debt instruments of many pipelines require the maintenance of certain reserves-to-production (R/P) ratios. If a pipeline's R/P ratio declines, the company may risk accelerated debt repayment or may be unable to arrange financing which may be necessary to attach new supplies or assure system reliability. These factors influenced some companies to seek new supplies at ever-increasing prices. At the same time, the companies have negotiated contracts for the new, expensive gas which committed them to high take-or-pay obligations. The consequence of these actions has been greater proportional takes by the pipeline of higher-priced supplies with an attendant increase in the cost of overall supplies.

At the same time that the cost of gas was being driven up, the demand for natural gas was softening. Industrial consumption also declined due to conservation and the installation of more fuel efficient equipment. Residential gas use fell to roughly 15 percent below what it was preceding the 1973 Arab oil embargo. Other factors were also at work: the economic recession slashed industrial demand and decreased the ability of consumers to absorb the recent price increases. Most recently, the dramatic drop in oil prices has made fuel oil an attractive alternative to natural gas for end-users with dual fuel capacity. In today's market, the inclusion of gas costs in a minimum commodity bill is a serious obstacle to the transmission of market signals, since the minimum commodity bill prevents purchasers from lowering their takes in response to lower demand—an action which would lower prices, especially if the purchaser has more than one supplier and is free to swing to the lowest priced one.

This situation is a significant change from the expanding markets of the 1940s and 1950s when most minimum commodity bill provisions were first incorporated into pipeline rate schedules. Three distinctions are of particular significance. First minimum commodity bills were historically used

to insure the debt service for new pipeline construction as the markets were developed, while today a more mature system is leading to little expansion. Second, the cost of purchased gas has increased substantially, both in absolute terms and as a percentage of the delivered cost of gas service. For example, the average wellhead price of gas in 1955 was 10 cents per Mcf, or only about 40 percent of the delivered cost to the city gate.¹⁵ By April, 1983, the average purchase gas cost of the major Class A and B interstate natural gas pipelines was \$3.08 per Mcf or almost 75 percent of the average city-gate price charged by these pipelines.¹⁶ Thus, inclusion of gas costs in a minimum commodity bill imposed a far smaller burden on customers during the period when the provisions were first introduced than at present.

Third, pipelines generally faced more risk regarding the recovery of their gas costs before the introductions of Purchased Gas Adjustment (PGA) clauses in the early 1970s. PGAs provide pipelines with a virtual guarantee of recovering their purchased gas costs via the PGA tracking mechanism. Until the early 1970s, PGAs were not available to pipelines. Before implementation of the PGAs pipelines made estimates of the gas costs they expected to incur in the future in determining their rates. As a result, pipelines faced the risk that actual gas costs during the period in which rates were in effect might differ from the estimated cost that was allowed to be recovered in the rates. Moreover, as most pipelines recovered substantial amounts of fixed costs in their commodity charges, recovery of these costs were also subject to greater risk.

The inclusion of minimum commodity bills in many approved tariffs on file with the Commission does not reflect any overriding public policy favoring their universal use. The burden imposed by such provisions was far less when purchased gas costs constituted a far smaller portion of total pipeline costs. In view of these considerations and the potential for overrecovery, the Commission now believes that it may no longer be in the public interest to allow any minimum commodity bill which requires a customer to pay its supplying for variable costs which are not in fact incurred. Indeed, on one system, when competitive forces were felt on at least one pipeline system, triggering

¹⁵ *AGA Gas Facts*, 119 and 124 (1961).

¹⁶ *E.I.A., Summary of F.E.R.C. Form 11* (April, 1983).

challenges to such a provision on anticompetitive grounds, the provision was found wanting.¹⁷

As stated by Judge Levanthal in *Atlantic Seaboard*:

Problems of inter-pipeline competition are emerging as important substantive questions requiring application of the Commission's expertise. The considerations are complex and competing. The high fixed costs and immobility of pipeline facilities are economic characteristics of the natural gas industry precluding the sort of competition expected as a norm elsewhere in the economy. However, the Commission may properly look to the existence of some competition, even if entry is limited by legal barriers and regulatory necessity, as an important and effective tool in increasing economic efficiency and quality of service.

The point is, however, that a policy favoring effective competition necessarily brings with it the reality of economic pinch, present or threatened.¹⁸

Accordingly, the Commission is proposing to modify its regulations to preclude all existing and future minimum commodity bills from recovering variable cost components which are not incurred.¹⁹ The Commission, therefore, is issuing this notice to determine whether the tariffs of natural gas companies that are on file with the Commission need to be modified, under section 5 of the Natural Gas Act, to eliminate from any minimum commodity bill provision all variable costs which are not incurred and to prohibit the inclusion of such variable costs in the future, under section 4 of the Natural Gas Act, since such costs in such provisions may be unjust and unreasonable. The Commission contemplates that, to the extent that minimum bills also assure recovery of a portion of the fixed cost in the commodity rate, the minimum commodity bills should continue to assure such recovery. However, we intend to explore here, and invite comments upon, the extent to which pipelines should be assured full recovery of fixed costs through minimum bill provisions. As capital structures have become less leveraged, the minimum bill provisions may be assuring greater return on equity. The Commission also invites comment on the role of make-up provisions in minimum commodity bills.

III. The Proposed Rule

Pursuant to sections 4, 5, and 16, of the Natural Gas Act, the Commission proposes to amend its rules and regulations prospectively to add a new § 154.111.

The proposed section states that on or after October 30, 1983, any portion of minimum commodity bill provision of any rate schedule for the sale of natural gas which provides for the recovery of purchase gas costs, fuel costs, or other variable costs, are inoperative and of no effect at law to the extent such costs are not incurred in rendering service. On or after that date, any rate schedule which is filed providing for such recovery will be rejected. At this time the Commission contemplates that a final rule in this docket would: (1) Apply to all minimum commodity bill provisions in natural gas tariffs on file with this Commission on the effective date of the rule; and (2) control all cases pending before the Commission in which and to the extent that a minimum commodity bill is at issue.

We do not at this time address the minimum bill provisions of transportation contracts and rate schedules because they respond to particular circumstances. However, we invite comments as to whether these minimum bill provisions should also be precluded from recovering variable costs. (Such comments should be submitted as a separate document in this docket and titled to indicate they relate to transportation). The Commission is aware that the proposed rule does not provide relief in those cases in which the terms of the project financing stand in the place of the variable cost component of a minimum commodity bill. (To date, project financing has been approved by us in cases of pure transportation systems.²⁰ The Commission invites comment on the issue of whether some mechanism similar in effect to this proposal should be applied in cases of the project financed pipelines, and, if so, suggestions for the structure of such a mechanism. (These comments should also be filed as a separate document in this docket and titled to indicate that they relate to project financing.)

IV. Regulatory Flexibility Act Certification

Pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 601-612 (Supp. V 1980)), the Commission finds that the provisions of the Act do not apply to this rulemaking since there

is no "significant economic impact on a substantial number of small entities." If promulgated, this rulemaking would affect the rate format of natural gas pipelines who file rates and tariffs as natural gas companies under the Natural Gas Act. The format proposed here would not directly effect the recovery of variable costs actually incurred; it merely serves to deny recovery of these costs through a specific rate clause. The costs which may not be recovered through the minimum commodity bill clause may still be recoverable through other devices. In view of the indirect impact of the change proposed here, the Commission sees no basis for a finding of "significant economic impact," and so certifies.

V. Public Comment Procedure

The Commission invites interested persons to submit written data, views, and other information concerning matters set out in this Notice. All comments should be submitted to the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street NE., Washington, D.C. 20426, and should refer to Docket No. RM83-71-000 (Phase II). An original and 14 copies must be filed. Comments must be received by the Commission no later than September 29, 1983.

All comments will be placed in the Commission's public file and will be available for public inspection during regular business hours at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(Natural Gas Act, 15 U.S.C. 717-717w (1976))

List of Subjects in 18 CFR Part 154

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 154, Title 18, Chapter 1, Code of Federal Regulations as set forth below.

By direction of the Commission,
Lois D. Cashell,
Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The table of contents is amended by adding a new § 154.111 to read as follows:

* * * * *

Sec.
154.111 Limitations on provisions in rate schedules and tariffs relating to minimum bills.
* * * * *

¹⁷ See *Atlantic Seaboard Corp. v. F.P.C.*, 404 F.2d 1268 (D.C. Cir. 1968).

¹⁸ *Id.* at 1271-72 (footnote deleted).

¹⁹ While the Commission is inclined to consider the carrying costs on pipeline-to-producer take-or-pay prepayment obligations as a fixed cost, we note that there are differences between take-or-pay costs and other fixed costs that may merit different rulemaking implications regarding their recovery through a minimum commodity bill.

²⁰ Ozark Gas Transmission Sys., 16 F.E.R.C. ¶61,099 (1981); Trailblazer Pipeline Co., 18 F.E.R.C. ¶61,244 (1982).

2. A new § 154.111 is added to read as follows:

§ 154.111 Limitations on provisions in rate schedules and tariffs relating to minimum bills.

On or after October 30, 1983, any portion of any minimum commodity bill provision of any rate schedule for the sale of natural gas which provides for the recovery of purchase gas costs, fuel costs, or other variable costs which are not incurred in providing natural gas service, are inoperative and of no effect at law. Any rate schedule, filed on or after October 30, 1983, which contains a minimum commodity bill provision which provides for the recovery of purchase gas costs, fuel costs, or other variable costs, shall be rejected to the extent that it provides for the recovery of costs which are not actually incurred in rendering service.

[FR Doc. 83-23646 Filed 8-29-83; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 82N-0269]

Wheat Gluten, Corn Gluten, and Zein; Proposed Affirmation of GRAS Status; Extension of Comment Period

AGENCY: Food and Drug Administration.
ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its proposal to affirm that wheat gluten, corn gluten, and zein are generally recognized as safe (GRAS) as direct human food ingredients. The International Wheat Gluten Association asked for the extension, and FDA is granting it.

DATE: Comments by October 12, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leo F. Mansor, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 12, 1983 (48 FR 31887), FDA published a proposal to affirm that wheat gluten, corn gluten, and zein are GRAS as direct human

food ingredients. FDA asked for comments by September 12, 1983.

By letter dated August 2, 1983, the International Wheat Gluten Association (IWGA), on behalf of 17 major wheat gluten-producing members throughout the world, asked FDA to extend the comment period by 30 days. The extension will allow time for the IWGA's members to discuss the subject at their next regular quarterly Technical Committee meeting to be held on September 12-13, 1983, and to prepare a formal response.

After carefully evaluating the request, FDA has decided to grant this very brief extension. FDA recognizes the significance of the issues involved in this matter and wishes to ensure that all interested persons have a fair amount of time for comment. Therefore, FDA has concluded that the comment period should be extended an additional 30 days.

Interested persons may, on or before October 12, 1983, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1983.

William R. Clark,
Acting Associate Director for Regulatory Affairs.

[FR Doc. 83-23705 Filed 8-29-83; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 341

[Docket No. 76N-052B]

Cold, Cough, Allergy, Bronchodilator and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Bronchodilator Drug Products; and Reopening of Administrative Record

AGENCY: Food and Drug Administration.
ACTION: Proposed rule; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for over-the-counter (OTC) bronchodilator drug products to accept comments that have been filed with the Dockets Management Branch, FDA, since the date that the administrative record officially closed and to include the results of a recent advisory committee

meeting. FDA is also reopening the administrative record for the filing of additional comments on the OTC marketing of metaproterenol sulfate metered-dose inhaler products.

DATE: Written comments by October 31, 1983.

ADDRESS: Comments are on file in the Dockets Management Branch (HFA-205), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, where additional written comments may be submitted.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 26, 1982 (47 FR 47520), FDA published a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which OTC bronchodilator drugs are generally recognized as safe and effective and not misbranded. In that document, FDA proposed OTC marketing of metaproterenol sulfate metered-dose inhaler products. Before the proposal, metaproterenol sulfate had been marketed in that dosage form as a prescription drug only.

At the time FDA proposed OTC marketing of metaproterenol sulfate metered-dose inhaler products, the agency believed that the drug was as safe but more effective than currently available OTC epinephrine products. For this reason, the agency concluded that the conversion of metaproterenol sulfate metered-dose inhaler products to OTC status would improve the overall quality of the OTC drug therapy available to persons suffering from asthma. The agency also concluded that it would be in the interest of the public health for this improvement to be effected immediately, rather than awaiting publication of a final monograph for OTC bronchodilator drugs, an event that might not occur for several years.

After the comment period on this proposal closed on December 27, 1982, two firms commenced the OTC marketing of metaproterenol sulfate in a metered-dose inhaler. Subsequently, FDA received many letters questioning the agency's decision to allow this drug to be marketed OTC. These letters criticized both the decision and the agency's failure to await comment, or seek the advice of its appropriate advisory committee, before allowing the decision to take effect.

In response to these criticisms, FDA scheduled a meeting of its Pulmonary-Allergy Drugs Advisory Committee to present the issue of the OTC marketing of metaproterenol sulfate. The advisory committee met on May 13. Presentations were made by FDA staff responsible for the decision, by several of the principal critics of the decision, by several proponents of the decision, and by representatives of one of the marketing firms, also in favor of the decision. Following these presentations, the advisory committee deliberated and, by a vote of 4 to 3, recommended to FDA that it rescind its decision to permit the OTC marketing of metaproterenol sulfate metered-dose inhaler. In the *Federal Register* of June 3, 1983 (48 FR 24925) the agency announced that metaproterenol sulfate in a metered-dose inhaler for use as a bronchodilator may not be marketed OTC at this time.

FDA has on occasion received comments bearing on a proposed rule after the closing of the administrative record. Under § 330.10(a)(10)(iii) of the procedural regulations for OTC drugs (21 CFR 330.10(a)(10)(iii)), the administrative record closes at the end of the comment period specified in the publication of the proposed rule in the *Federal Register*. Following publication of the proposed rule on OTC bronchodilator drug products, the administrative record for the submission of comments and objections closed on December 27, 1982. As provided in § 330.10(a)(10)(iii), the letters received after December 27, 1982, as well as the results of the May 13 advisory committee meeting, could not be included in the administrative record unless the Commissioner of Food and Drugs reopened the administrative record. Because these letters and the advisory committee's recommendation were part of the basis for the agency's decision to rescind the OTC marketing status of metaproterenol sulfate in a metered-dose inhaler, and because the letters and the advisory committee proceedings also contain a number of comments on epinephrine metered-dose inhaler and on metaproterenol sulfate tablets and syrup, the Commissioner is reopening the administrative record to include the letters and the minutes and transcripts of the advisory committee meeting in the record for agency consideration prior to the publication of the final rule on OTC bronchodilator drug products.

At this time, the agency is also reopening the administrative record for OTC bronchodilator drug products to accept comments relating only to the issue of the OTC marketing of metered-

dose inhaler products containing metaproterenol sulfate. Additional comments on this subject only may be submitted for 60 days following this reopening of the administrative record.

The administrative record has been open for the limited purpose of allowing the submission of new data demonstrating the safety and effectiveness of conditions not classified in Category I since publication of the proposed rule for OTC bronchodilator drug products (October 26, 1982). The agency advises that the dates identified in the proposed rule (47 FR 47520) for the submission of new data by October 26, 1983, and comments on the new data by December 26, 1983, are not affected by the 60-day comment period provided for in this document.

This notice serves to inform interested persons of the existence of letters containing comments, objections, data, and information on metaproterenol sulfate metered-dose inhaler products; their availability for review at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday; and to provide for the filing of additional written comments by October 31, 1983 on the OTC marketing of metaproterenol sulfate metered-dose inhaler products. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: August 24, 1983.

William R. Clark,

Acting Associate Director for Regulatory Affairs.

[FR Doc. 83-23706 Filed 8-29-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 680

[Docket No. 78N-0172]

Allergenic Products; Proposed Limit of Maximum Volume in Multiple-Dose Containers; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a proposal that would have limited the maximum volume of Allergenic Products contained in multiple-dose containers to 30 milliliters (mL). This regulation was proposed with the intent of reducing the possibility of product contamination and to be consistent with recommendations in the United States Pharmacopeia,

Nineteenth Revision ("U.S.P." XIX) regarding maximum volume of drugs in multiple-dose containers. The proposal is being withdrawn because data made available to the agency after publication of the proposal demonstrate no relationship between contamination and the volume of allergenic material in a container.

DATE: Comments by October 31, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rada Proehl, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of July 14, 1978 (43 FR 30302), FDA proposed to amend § 680.2 (21 CFR 680.2) of the biologics regulations to limit the permitted maximum volume of Allergenic Products in multiple-dose containers to 30 mL. Multiple-dose containers are designed to permit the withdrawal of successive portions of the contents without affecting the strength, quality, or purity of the remaining portion. However, because multiple-dose containers may be entered several times, there is the potential danger of contamination. It would be expected that the smaller the volume of product in a container, the fewer times it would be entered, thereby minimizing the chance of introducing and exposing the product to environmental contaminants. Because there are no existing maximum volume requirements for Allergenic Products, FDA proposed that the volume of Allergenic Products in multiple-dose containers be limited to 30 mL. In addition to reducing the possibility of product contamination, the proposed amendment would have provided consistency between the biologics regulations and the recommendations in "U.S.P." XIX regarding maximum volume of drugs in multiple-dose containers which had not been applied to allergenic biological drugs.

In response to the proposal, 78 comments were received. The consensus among the comments is that there is a lack of evidence to show that larger than 30-mL containers of Allergenic Products present more risks than 30-mL containers if proper precautions are taken each time the container is entered. As expressed by one comment, "Contamination of the multidose container is a function of the care and preparation with which the user

operates." The comments also said that the cost of providing allergy medical care could only be increased as a result of the proposed limitation of container size to 30 mL. Contributing to this cost increase are the more expensive packing and shipping for smaller containers, combined with the need for increased refrigerated storage, space, e.g., two 30-mL vials occupy more space than one 50 or 60-mL vial. As additional supportive argument against requiring a maximum volume limitation of 30 mL for containers of allergenic extracts, many of the comments said most allergists buy large extract containers to be used mainly as stock containers for extraction and dilution purposes and rarely to be used as multiple-dose containers. Accordingly, the contamination risk is diminished because of infrequent entry into the stock container.

Since the July 14, 1978 publication, FDA has reviewed data that were not previously available concerning the sterility of Allergenic Products in multiple-dose containers that demonstrate no relationship between contamination and volume of material in a container. These data were not available for public display at the time of the July 14, 1978 Federal Register publication. The agency believes it desirable, although not legally required, to receive public comments on these data. Accordingly, FDA has placed the documents containing the data on file for public review in the Dockets Management Branch, FDA, under Docket No. 78N-0172 and will accept comments on them until October 31, 1983.

All comments received on these data will become part of the administrative record for this matter and will be placed on file for public review in the Dockets Management Branch (address above) under Docket No. 78N-0172.

FDA will review all the comments received on these data and any other data on this issue that become available. But FDA will publish a reproposal only if comments received on these data or new data warrant it.

List of Subjects in 21 CFR Part 680

Biologics, Blood.

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 510, 701, 704, 52 Stat. 1049-1050 as amended, 1055-1056 as amended, 67 Stat. 477 as amended, 76 Stat. 794 as amended (21 U.S.C. 351, 360, 371, 374)), the Public Health Service Act (sec. 351, 58 Stat. 702

as amended (42 U.S.C. 262)); and under 21 CFR 5.11 (see 47 FR 16010; April 14, 1982), the proposed amendment appearing at page 30302 in the Federal Register of July 14, 1978, to add new paragraph (e) to § 680.2 *Manufacture of allergenic products* is withdrawn.

Dated: August 19, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 83-23711 Filed 8-29-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGO 79-131]

U.S./Canadian Cooperative Vessel Traffic Management System

Correction

In FR Doc. 83-22666, beginning on page 37433, in the issue of Thursday, August 18, 1983, make the following corrections:

1. On page 37435, in the third column, in § 161.202(a), in the first line "or less" should read "of less".

2. On page 37436, in the first column, in § 161.206(b), in the third line, "Transportation" should read "Transport"; in the second column, in the same section, in the fifth line from the top "Van couver" should read "Vancouver".

3. On page 37436, in the second column, in § 161.208(a), in the fifth line, "procedure provides" should read "procedure for use in U.S. waters if he is satisfied that such other procedure provides".

4. Also on page 37436, in the second column, in § 161.214, in the last line of the table "Van Couver" should read "Vancouver".

5. On page 37438, in the third column, in § 161.266(a), in the third line "51.3" should read "53.3".

BILLING CODE 1505-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300076; PH-FRL 2424-4]

Sulfuric Acid; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that sulfuric acid that meets the Food Chemicals Codex specifications be exempted from the requirement of a tolerance when used as an inert ingredient pH control agent in pesticide formulations. This proposed regulation was requested by Dow Corning Corporation.

DATE: Written comments must be received on or before September 30, 1983.

ADDRESS: Written comments may be submitted by mail to: Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: N. Bhushan Mandava (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Dow Corning Corp., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for sulfuric acid that meets the Food Chemical Codex specifications and is used as an inert ingredient pH control agent.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient: Sulfuric acid.

Name and address of requestor: Dow Corning Corporation, Midland, Michigan 48640.

Bases for approval:—1. Sulfuric acid has been recently affirmed as generally

recognized as safe (GRAS), 21 CFR 184.1095, as a direct food additive.

2. Sulfuric acid is exempted from the requirement of a tolerance under 40 CFR 180.1018 when used as a desiccant on potato vines and garlic.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) as amended that contains this inert ingredient may request within 30 days after publication of this document in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300076]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 23, 1983.

Robert Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(c) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

| Inert ingredients | Limits | Uses |
|------------------------------------------------------------------------------------------------|--------------------------------|-------------------|
| Sulfuric acid (CAS Registry No. 7664-93-9) that meets the Food Chemicals Codex specifications. | 0.1% of pesticide formulation. | pH control agent. |

[FR Doc. 83-23861 Filed 8-29-83; 8:45 a.m.]

BILLING CODE 5560-50

40 CFR Part 721

[OPTS-50504; BH-FRL 2387-7]

Toxic Substances; 1,2-Benzenediamine, 4-Ethoxy, Sulfate; Proposed Determination of Significant New Uses BH-FRL 2387-7]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a Significant New Use Rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), to require persons to notify EPA at least 90 days before manufacturing, importing, or processing a substance for a "significant new use." EPA is proposing that manufacture, import, or processing in powder or dry solid form of a substance known as 1,2-benzenediamine, 4-ethoxy, sulfate be designated as a "significant new use." The substance was the subject of premanufacture notice (PMN) P-83-105. EPA believes that the new uses defined in this rule may present a risk to health.

DATES: Written comments should be submitted by October 31, 1983.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS 50504. Comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT:

Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: Section 5(a)(2) of the Toxic Substances Control Act authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under Section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is generally subject to the same statutory requirements and procedures as a PMN submitted under Section 5(a)(1)(A). In particular, these include the information submission requirements of section 5(d)(1) and section 5(b), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f). If EPA does not take regulatory action under sections 5, 6 or 7 to control a substance on which it has received a SNUR notice, section 5(g) requires the Agency to explain its reasons for not taking action in the *Federal Register*. Substances covered by proposed or final SNURs are subject to the export reporting requirements of TACA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707.

I. PMN Background

The chemical substance covered by this proposed rule is 1,2-benzenediamine, 4-ethoxy, sulfate, which was the subject of PMN P-83-105.

On November 8, 1982, EPA received the PMN from American Hoechst Corporation. EPA announced receipt of the PMN in the *Federal Register* of November 19, 1982 (47 FR 52223). The notice submitter claimed the proposed import volume of the substance as confidential business information. The notice submitter stated in the PMN that the substance will be used as a dye intermediate. The PMN submission did

not contain any test data on the substance.

The agency is concerned that P-83-105 may possess oncogenic potential following inhalation or ingestion, including swallowing of inhaled particles. This concern is based on positive oncogenicity findings in animal studies with four structural analogues of the substance (*o*-phenylenediamine (CAS 95-54-5); 4-chloro-*o*-phenylenediamine (CAS 95-83-0); 2, 4-diaminobenzene (CAS 615-05-4); and 3-amino-4-ethoxyacetanilide (CAS 17026-812)). The four analogues, as well as the PMN substance, are all derivatives of phenylene diamine. For convenience, the analogues will be referred to by their common names as presented here. The PMN substance will be referred to by its PMN number.

P-83-105 is expected to be readily absorbed in the lungs and in the intestine, since it is neutralized at the pH values found in these tissues to its un-ionized *o*-phenylenediamine parent, a low molecular weight diamine with solubility properties which favor absorption. Absorption in the stomach or penetration of the skin would not be expected, as the substance would remain ionized in the acidic environment of the stomach or on the surface of the skin, and such ionized species are not absorbed by these routes.

There are no known chronic toxicity or oncogenicity test data on the intact substance. However, results from studies with *o*-phenylenediamine and 4-chloro-*o*-phenylenediamine, the two closest structural analogues, show that the *o*-phenylenediamine moiety has oncogenic potential. Additional substituents on *o*-phenylenediamine do not appear to mitigate its oncogenic potential as evidenced by oncogenicity studies on other analogues. Those studies, however, suggest that various substituents may alter the types of tumor induced or the malignancy of the tumor induced. In summary, the data support the proposition that P-83-105 is likely to have oncogenic potential. Results from these studies are summarized below.

Male rats dosed with dietary concentrations of 2,000 mg/kg and 4,000 mg/kg of *o*-phenylenediamine for 18 months and female mice dosed with dietary concentrations of 6,872 mg/kg and 13,743 mg/kg of *o*-phenylenediamine showed a statistically significant increase in hepatomas.

When male and female rats were dosed with dietary concentrations of 5,000 mg/kg and 10,000 mg/kg of 4-chloro-*o*-phenylenediamine, and male and female mice were dosed with

dietary concentrations of 7,000 mg/kg and 14,000 mg/kg of 4-chloro-*o*-phenylenediamine, tumors of the urinary bladder in both sexes of rats and hepatocellular carcinomas in both sexes of mice resulted. Neoplastic nodules in the liver and squamous cell papillomas and squamous cell carcinomas of the forestomach may also have been related to administration of the chemical.

When rats were dosed with 2, 4-diaminobenzene sulfate in dietary concentrations of 5,000 mg/kg and 1,200 mg/kg and mice were dosed with dietary concentrations of 2,400 mg/kg and 1,200 mg/kg for 78 weeks, malignant tumors of the skin and its associated glands and malignant thyroid tumors were seen in the rats. Thyroid tumors were seen in the mice.

Rats dosed with 3-amino-4-ethoxyacetanilide for 18 weeks with dietary concentrations of 4,000 mg/kg and 15,000 mg/kg, however, showed no statistically significant neoplastic lesions. On the other hand, mice dosed for 78 weeks with dietary concentrations of 4,000 mg/kg and 8,000 mg/kg showed statistically significant incidence of follicular cell carcinomas of the thyroid.

Based on the oncogenicity information provided above and the structural similarity of P-83-105 to these structural analogues, EPA believes that the oncogenic potential of P-83-105 merits Agency review of a use if the substance may result in inhalation or ingestion of the substance.

In EPA's review of the PMN exposures, the Agency determined that human exposure would be negligible because of the compound's physical state. P-83-105 will be imported in drums as a water wet solid. The greatest human exposure to the substance would occur during processing. According to the PMN submission, three processing workers may be exposed for about 70 person hours per year during reactor charging operations. Reactor charging will involve either shoveling or dumping the substance from the drums in which it was imported into a hopper. The hopper then feeds the substance into the reactor.

During this operation, inhalation exposure (and any resulting ingestion) will be negligible because the substance, as a water wet solid, will not dust during manual transfers. Dermal exposure may result from splashing or spilling of the water wet solid during shovelling or dumping activities. Thus, the only expected major route of exposure to P-83-105 as a water wet solid is dermal. Since EPA does not believe that the substance will penetrate the skin because of the strongly ionic nature of the substance, the Agency

took no action during the review period because of the low human exposure associated with the PMN use.

II. Reasons for Proposing This Rule

The PMN review period for P-83-105 ended on February 5, 1983. Since the notice submitter has commenced commercial manufacture of the substance and submitted a Notice of Commencement of Manufacture to EPA, the Agency is adding the substance to the TSCA Chemical Substance Inventory. When the substance is on the Inventory, another person may manufacture or process the substance in any physical form.

As stated above, EPA identified potential adverse human health effects associated with P-83-105, but took no action during the PMN review period because of the low potential for inhalation or ingestion of the substance in the proposed PMN use. However, if the substance is manufactured, imported, or processed as a powder or dry solid, the exposure would be significantly greater. Therefore, EPA is proposing to designate manufacture, import, or processing of the substance in a powder or dry solid form as a significant new use so that the Agency can review that use before it occurs.

EPA has verified that certain dye intermediates are used in powder or dry solid form and sees no reason why P-83-105 could not be used in this form. If the substance is used as a powder or dry solid, workers potentially could be exposed to the PMN substance during sampling, filtering, drying, drumming, or bagging operations. Powder or dry solid is likely to release dust and inhalation exposures could result if respirators or dust masks are not worn and if adequate ventilation is not provided.

The Occupational Safety and Health Administration (OSHA) has set a limit of 5 mg/m³ as the maximum eight-hour time weighted average (TWA) concentration of respirable nuisance dust to which a worker can be exposed. However, personal monitoring data taken at a manufacturing site for powder dyes indicated that eight-hour TWA total airborne particulate concentrations range from 1.8 to 12.8 mg/m³. The amount of dyestuff in the airborne particulate concentrations was estimated to be 80 percent, resulting in estimated eight-hour TWA dyestuff concentrations ranging from 1.4 to 10.2 mg/m³ with an average of 5.4 mg/m³. Manufacturing workers exposed to these concentrations could inhale from 1.75 to 12.75 mg of P-83-105 per day with an average dose of 6.75 mg per day. Although EPA assumes that the OSHA

limit is generally followed, these estimates represent realistic worst-case scenarios. (EPA, SNUR Engineering Report, March 8, 1983—not available to the public due to the incorporation of Confidential Business Information)

Given EPA's concern about P-83-105, EPA believes this level of exposure may present significant risks to workers. This level of exposure would present a significant amount of the substance to be inhaled or ingested. Based on the estimated potency of P-83-105 substance as derived from analogues, any significant inhalation or ingestion would present an oncogenic risk to workers.

During processing, workers may also inhale the dust. For example, workers may be exposed to the powder form of the substance during reactor charging operations. Reactor charging would involve either scooping the substance from the drum and dumping it into the hopper for the reactor or ripping open bags and emptying the contents into the reactor hopper. If P-83-105 is handled in this manner as a powder or dry solid, there is a strong possibility that dusting will occur. Thus, workers may inhale the substance. As a worst case, EPA estimates that each worker involved in the charging operation could inhale amounts similar to those experienced during manufacture (approximately 6.75 mg per day). This greater potential for exposure to a new form of the substance (powder or dry solid) would be of significant concern to the Agency. Although the worst-case exposure levels for workers from manufacture and processing are estimated to be similar, actual exposure levels for each activity will vary depending on the methods of manufacture and processing. For example, if processing occurred on a less continuous basis, there would be less exposure for involved workers. However, unless the substance is carefully controlled, any significant exposure would present an oncogenic risk of concern.

III. Proposed Significant New Use

To determine what would constitute a significant new use of this chemical substance, EPA considered relevant information about the toxicity of P-83-105 and likely exposures associated with possible new uses, including the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential new uses may change or increase the exposure to humans. Based on these considerations, EPA proposes to define manufacture or processing in a powder or dry solid form as a significant new use.

By "powder or dry solid form," EPA means a situation where the dyestuff containing P-83-105 would be manufactured or processed in a state where all or part of the substance would have the potential to become fine, loose, solid particles. Typically, this would result from the removal of a solvent from a solution or filtercake, thus isolating P-83-105 as a solute which may undergo further solvent removal by the addition of heat and subsequent crushing or grinding to reduce the particle size. EPA requests comment on use of the term "powder or dry solid form" and its proposed definition.

IV. Alternatives

Before proposing this SNUR, EPA considered other possible approaches. The major alternative is to promulgate a section 8(a) reporting rule for the substance. Under such a rule, EPA could require any person to report to EPA before manufacturing or processing the substance. However, the use of section 8(a) rather than SNUR authority has drawbacks. Small businesses would be exempt from reporting under section 8(a). In addition, if EPA received a report under section 8(a) indicating that a person intended to manufacture or process the substance as a powder, the Agency could not take action under section 5(e) as it can under a SNUR and thus would not be able to regulate the substance pending development of information.

It is difficult to predict what action EPA would take after section 8 reporting for this chemical given: (1) Its concern, (2) the possible scenarios under which reporting would be required, and the information it might receive in an 8(a) report. Depending on the information EPA received in the section 8(a) notice, EPA could require test data under section 4 and then, if necessary, regulate the substance under section 6. As an alternative EPA could promulgate a SNUR. This approach would allow unnecessary risks to human health during the time needed for data development. The Agency specifically requests comment on use of section 8(a) reporting as a possible alternative to promulgating a SNUR.

V. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) requires persons to submit a SNUR notice to EPA before they manufacture, import, or process a substance subject to a SNUR for a significant new use. If a person proposed to manufacture P-83-105 in powder or dry solid form, only the manufacturer would be required to submit a notice. However, if a person

were going to process P-83-105 in powder or dry solid form, under the statute both the manufacturer/importer and the processor would be legally subject to the SNUR requirements and, thus, would both be required to submit a notice. However, this may be unnecessary since it could result in the Agency receiving the same information from both parties. Therefore, EPA is considering in such a situation allowing the manufacturer, importer and processor to decide which party should submit what information to EPA so long as all appropriate information is submitted. Thus, the manufacturer, importer and processor could decide to submit one joint SNUR notice or to submit separate notices each containing the information uniquely within the purview of the respective party. For example, under a separate notice, the processor could submit a notice containing such information as likely exposures and releases from processing, while the manufacturer may submit a notice containing information such as expected exposure and release during manufacture and the projected market potential for the substance. Both the manufacturer and processor would submit test data in their sole possession or, control and the parties would determine who is responsible for submitting test data that they both possess or control. Alternatively, the manufacturer and processor could decide to submit one joint notice containing information from both parties.

EPA is also considering requiring only the person most familiar with the exposures resulting from the new use to report. In the case of manufacturing for the new use, the manufacturer would be the one most familiar with exposures during manufacture; in the case of processing for the new use, the processor would be most familiar with processing exposures. In the latter case, EPA would, of course, encourage submission of relevant information by others such as the manufacturer; and, if the information in the notice were insufficient to reasonably assess the risks, EPA could take action under section 5(e) of TSCA to regulate the new use pending submission of the information. In situations where it is not clear who should submit a notice, EPA would encourage potential submitters to consult EPA before submitting a notice.

The Agency specifically requests comment on these various approaches.

VI. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA recognizes that when chemical substances proposed to be subject to a SNUR are added to the Inventory, they may be manufactured or processed for "significant new uses" as defined in the proposal before promulgation of the rule. The statute and its legislative history do not make clear whether uses occurring after proposal but before promulgation are to be considered "new uses" subject to SNUR notification. However, EPA believes that the intent of section 5(a)(1)(B) can be best served by determining whether a use is "new" or "existing" as of the proposal date of the SNUR. If EPA considered uses commenced during the proposal period to be "existing" rather than "new" uses, it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, under this statutory interpretation, if substances are manufactured or processed between proposal and promulgation for proposed "significant new uses," the Agency will still consider such uses to be "new" if those particular significant new uses are included in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who commenced manufacture or processing for a "significant new use" during the proposal period. However, this proposal puts those persons on notice of that potential disruption, and they proceed at their own risk. The Agency specifically requests comment on ways to minimize this disruption.

VII. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The final rule will be published in the *Federal Register* and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA is exploring additional ways of informing potential SNUR notice submitters of the existence of the rule.

EPA intends to publish information concerning final SNURs in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of final SNURs through footnotes by the chemical identities of substances

subject to SNURs. The footnotes would refer to an Inventory Appendix which would give a *Federal Register* or CFR citation of the SNUR. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNURs as an Inventory Appendix.

Any person who intends to manufacture, import, or process a substance for the first time should check the Inventory to determine if the substance is listed. If a person found that the substance is on the Inventory, but subject to a SNUR, he could determine whether he would be subject to reporting by contacting EPA or reviewing the rule.

EPA recognizes that some processors may not know the identity of substances they process and therefore may not know they are subject to a SNUR. Therefore, EPA has identified two alternatives for determining liability for submission of a SNUR notice.

First, if a SNUR notice had not been submitted, EPA could hold manufacturers and importers liable if any of their customers process the substance for the significant new use even if the manufacturer or importer did not know that the customer intended to process the substance for a significant new use. However, manufacturers and importers could avoid this problem by informing their customers in writing that the substance is subject to a SNUR. Even if a manufacturer or importer provided such information to a customer, if the manufacturer or importer had reason to believe that the customer is commencing a significant new use before submitting a SNUR notice, the manufacturer or importer would be required to submit a SNUR notice to EPA, to immediately cease sales of the substance to the processor, and to notify EPA enforcement authorities to avoid liability. If the manufacturer or importer notified EPA, the Agency would take this into account in calculating any penalty for that violation.

Second, EPA could hold processors liable if they process a substance for a significant new use without submitting a SNUR notice, even if they did not know the identity of the substance or that the substance was subject to a SNUR. However, processors could avoid this problem by asking their suppliers to verify in writing that the substances are not subject to a SNUR. EPA believes that many processors ask suppliers to certify that chemical substances of unknown identity are on the Inventory. Therefore, the Agency believes that processors can similarly ask suppliers

whether substances are subject to SNUR notice requirements.

The Agency specifically requests comment on these two approaches as well as on other approaches to ensure that SNUR notice requirements are followed.

VIII. Required Information

The Agency proposes that SNUR notice submitters use the premanufacture notice form and follow the PMN rules published in the *Federal Register* of May 13, 1983 (48 FR 21722), except as otherwise provided in this SNUR.

IX. Test Data

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in his possession or control and to describe any other data known to him or reasonably ascertainable by him. However, in view of the potential health risk that may be posed by a significant new use of P-83-105, EPA encourages possible SNUR notice submitters to test the substance's potential for oncogenicity. The Agency believes that the results of a two-year rodent bioassay would adequately characterize possible oncogenic effects of the substance. If a SNUR notice is submitted for a use involving significant exposure without adequate test data, EPA is likely to take action under section 5(e). As an alternative to testing the substance, potential notice submitters may want to consider the use of engineering control and personal protective equipment to reduce exposure to the substance. If exposure to the substance is minimized, EPA may allow manufacture or processing of the substance with those controls.

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance.

Test data should be developed according to good laboratory practices and through the use of methodologies generally accepted at the time the study is initiated. Failure to do so may lead the Agency to find the data to be insufficient to evaluate reasonably the health effects of the substance.

X. EPA Review of Notice

EPA proposes to review SNUR notices the same way it reviews premanufacture notices and to subject the notices to the

procedures appearing in the final PMN rule. EPA will publish a summary of each notice for publication in the *Federal Register* under section 5(d)(2). The review period for the notice will run 90 days from EPA's receipt of the notice. Under section 5(c) this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for a significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for a chemical substance without information sufficient to judge the toxicity and exposure potential of the substance, EPA may issue a section 5(e) order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit a significant new use that presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a SNUR notice to other EPA offices and other Federal agencies. If EPA does not take action under sections 5, 6, or 7 to control a substance on which it has received a significant new use notice, section 5(g) requires the Agency to explain in the *Federal Register* its reasons for not taking action.

XI. Modification of Reporting Requirements

The Agency believes that there may be circumstances that will lead to modification of the proposed requirements.

When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is necessary. If after review, EPA allows the use to occur, the use arguably should not be subject to further reporting. EPA will amend the SNUR to eliminate notice requirements for the use if the Agency decides that further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to eliminate notice requirements for other uses if it determines, based on new data, that the substance no longer presents health or environmental concerns for those uses.

EPA will amend a SNUR through a rulemaking. When EPA revises a SNUR by eliminating notice requirements for a single, narrow use of the substance, the Agency may dispense with notice and comment if it for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. However, EPA will completely revoke or substantially alter a SNUR

only after notice and an opportunity for comment.

XII. Proposed Rule Language

This proposed rule is structured as follows. The chemical and defined significant new use are described in paragraph (a) of this rule. Paragraph (b), contains definitions applicable for the section, most of which have been used in other TSCA rules. Paragraph (c) describes the persons who must report. In this proposal, EPA also makes clear that the "principal importer" in an import transaction must be the party that submits the SNUR notice. An explanation of the principal importer concept appears in EPA's clarification of its proposed premanufacture notification requirements published in the *Federal Register* of September 23, 1980 (45FR 63006) and in the preamble to the final PMN rule. The notice requirements and procedures for reporting under this rule are stated in paragraph (d).

Paragraph (e) clarifies that the exemptions of TSCA section 5(h) apply in SNURs with the exception of the section 5(h)(4) exemption provisions which apply only to new chemical substances. Thus, substances may be manufactured in small quantities solely for research and development without a SNUR notice being submitted. Similarly, substances may be test marketed for a significant new use, as defined by rule, if a test marketing exemption is approved by EPA. In addition, EPA proposes that the substance not be subject to SNUR notice requirements if it is manufactured or processed only as an impurity or byproduct. This is because such byproducts and impurities are difficult to detect and do not present significant exposure concerns. Paragraph (f) describes enforcement provisions applicable to this rule.

EPA invites comments on all aspects of this proposed rule language.

XIII. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 or any rule promulgated under section 5. Manufacture or processing of chemical substances for a significant new use, as defined by rule, without submission of a SNUR notice, would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

1. Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, imported or processed in violation of a SNUR.
2. Fail or refuse to permit entry or inspection as required by section 11.

3. Fail or refuse to permit access to or copying of records, as required by TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. The submission of materially misleading or false information in connection with the requirement of any provision of a SNUR would be considered a violation of the SNUR. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of a SNUR could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

XIV. Analyses and Assessments

A. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for P-83-105. This evaluation is summarized below.

Persons who intend to manufacture or process the substance for a significant new use, as defined in this rule, would be required to submit a SNUR notice with the information required by the statute. The cost of submitting a SNUR notice can be estimated from the cost of submitting a PMN, which has been estimated to range between \$1,400 and \$7,900 per substance.

The SNUR may also result in delay costs. The delay caused by the preparation of a SNUR notice and the statutory notice review period could reduce the value of future profits. EPA estimates that these delay costs would be about \$700.

The SNUR would not require that persons submitting notices perform additional toxicity testing. However, EPA has insufficient information to determine if P-83-105 would present an

unreasonable risk if used in a powder form. The Agency has determined that the results of a two-year rodent bioassay would adequately characterize carcinogenic effects of the substance in powder or dry solid form. EPA could require the submitter of a SNUR notice either to control exposures or limit production under section 5(e) until sufficient information is provided for EPA to make its determination.

In light of the high cost of performing a two-year bioassay (the direct cost of a two-year bioassay, inhalation route test ranges from \$742,000 to \$874,500 per chemical tested), EPA does not anticipate that a company will perform the testing. However, depending upon the potential market for P-83-105 in a powder or dry solid form, a company may produce and process the substance using certain exposure controls.

EPA believes that there may exist methods of reducing exposure of P-83-105 to the workers during manufacture and processing while data are being developed that would mitigate EPA's concerns. While EPA is unable to specify prior to submission of a SNUR notice the exact combination of exposure controls that would mitigate its concerns for the variety of manufacturing and processing methods, the Agency estimates that a SNUR notice submitter will have to spend a maximum of \$12,500 on exposure controls.

Assuming that a company would consider producing P-83-105 in powder or dry solid form with exposure controls in place, the total direct costs, including notification, complying with a section 5(e) order, purchase of exposure controls and delay, would be between \$25,700 and \$74,100. These direct costs would add between 11.8 and 34 percent to the estimated price of the substance.

EPA has not estimated any indirect costs that may result from this SNUR. These indirect costs may result from decisions not to manufacture or process the substance because of uncertainty about possible Agency regulatory action. Similarly, a decision not to manufacture might result in response to the magnitude of the direct costs. The cost of this impact would be whatever profits or benefits to users that the substance would have generated. In addition, EPA has not estimated the potential public benefits gained through the avoidance of potential health problems. Such benefits include the avoidance of costs such as the medical costs of treating exposed persons. While the Agency acknowledges that indirect costs and benefits exist, it is impossible at this time to estimate their extent precisely.

As a regulatory alternative, EPA considered proposing reporting requirements under section 8(a) rather than a SNUR. Therefore, the Agency also assessed the costs and benefits of a section 8(a) rule. An 8(a) submission is estimated to cost \$210-\$7,950. Unlike a SNUR, a section 8(a) rule would not cause delay costs.

A regulatory action might follow after the Agency receives a section 8(a) notification because of the concerns EPA has for the substance. However, it is difficult to project what action might be taken following receipt of an 8(a) report because of the different scenarios under which reporting could be required and the different information that could be submitted. One alternative is requiring testing under section 4. The cost of 8(a) reporting together with the cost of analysis and decision for a section 4 rule, subsequent testing, and delay would range from \$748,900 to \$897,640. Because this cost would be significant, EPA would not expect testing to be a likely response to a section 4 test rule. A more likely response would be cessation of manufacture.

Follow-up action under a SNUR is another possible response, as well as possible action under section 5(e) after receipt of a SNUR notice. These costs would be identical to those outlined above. The direct cost of an 8(a) rule and all subsequent actions (SNUR plus section 5(e) action) would range from \$25,900 to \$82,100. This would add from 11.9 to 37.8 percent to the estimated price of P-83-105. The Agency did not estimate the costs of other possible follow-up actions to submission of an 8(a) notice, such as controlling the chemical under section 6.

The prime benefit of a SNUR over a section 8(a) rule is that the substance cannot be used in powder or dry solid form until EPA has reviewed a SNUR notice and had the opportunity to take action under section 5(e). For this reason and because small manufacturers and processors are covered, EPA believes that a SNUR is the appropriate course of action in this case.

A more complete economic analysis of this SNUR and other regulatory options is included in the rulemaking record and is available for public review. EPA invites comment on this economic analysis.

B. Regulatory Assessment Requirements

1. *Executive Order 12291.*—Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule"

because it does not have an effect on the economy of \$100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the suggested testing and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the record for this rulemaking.

2. *Regulatory Flexibility Act.*—Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

3. *Paperwork Reduction Act.*—Information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq* and have been assigned OMB control number 2070-0012.

XV. Confidential Business Information

Any person who submits comments which the person claims as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting

confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XVI. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS-50504). The complete record is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, RM. E-107, 401 M St. SW., Washington, D.C.

The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The PMN for this substance with confidential business information deleted.
2. The Federal Register notice of receipt of the PMN.
3. The summary of toxicity concerns for the substance.
4. The analysis of potential new uses of the substance, with confidential business information deleted.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between publication of this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

(Sec. 5, Pub. L. 94-469, 90 Stat. 2012 [15 U.S.C. 2604])

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 18, 1983.

William D. Ruckelshaus,
Administrator.

PART 172—[AMENDED]

It is proposed that a new § 721.45 be added to proposed 40 CFR Part 721 to read as follows:

§ 721.45 1,2-Benzenediamine, 4-ethoxy, sulfate.

This section identifies activities with respect to 1,2-benzenediamine, 4-ethoxy, sulfate which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substance Control Act (TSCA). In addition, it specifies procedures for reporting on these chemicals.

(a) *Chemical substance and new uses subject to reporting.* Manufacture, import, or processing in powder or dry solid form is a "significant new use" of 1,2-benzenediamine, 4-ethoxy, sulfate.

(b) *Definitions.* The definitions section 3 of TSCA, 15 U.S.C. 2602, apply to this section. In addition, the following definitions apply:

(1) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(c) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process for commercial purposes the substance listed in paragraph (a) of this section for the significant new use defined in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this Chapter, and this section. Any notice of import must be submitted by the principal importer.

(d) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing the significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1). The notice must be submitted on the notice form in Appendix A to Part 720 of this Chapter and must comply with the requirements of Part 720 of this Chapter except to the extent that they are inconsistent with this section.

(e) *Exemptions and exclusions.* The chemical substance listed in paragraph (a) of this section is not subject to the notification requirements of this section if:

- (1) The substance is manufactured only in small quantities solely for research and development if the substance is manufactured in accordance with § 720.36 of this Chapter.
- (2) The manufacturer has been granted a test marketing exemption under the authority of section 5(h)(1) of the Act for the use described in paragraph (a) of this section. Applicants wishing a test marketing exemption

must submit an application to the Agency in compliance with § 720.38 of this Chapter.

(3) The substance is manufactured or processed only as an impurity or byproduct.

(f) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act [15 U.S.C. 2614].

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, imported or processed in violation of this section is a violation of section 15 of the Act [15 U.S.C. 2614].

(3) Failure or refusal to permit access to or copying of records, as required by section 11 of the Act, is a violation of section 15 of the Act [15 U.S.C. 2614].

(4) Failure or refusal to permit entry or inspection, as required by section 11 of the Act, is a violation of section 15 of the Act [15 U.S.C. 2614].

(5) Violators may be subject to the civil and criminal penalties in section 16 of the Act [15 U.S.C. 2615] for each violation. Persons who submit false or misleading information in connection with the requirement of any provision of this section may be subject to penalties calculated as if they never filed a notice.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of TSCA section 7 or 17 of the Act [17 U.S.C. 2606 or 2616].

[FR Doc. 83-23753 Filed 8-29-83; 8:45 am]

BILLING CODE 5560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43; Sub-No. 15]

Elimination of Thirty Day Leasing Requirement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In Ex Parte No. MC-43 (Sub-No. 12), *Leasing Rule Modifications*,¹ we eliminated the 30-day minimum lease requirement from our regulations applicable to private carriers to allow them to trip lease their equipment and

¹ 132 M.C.C. 927 (1982); 47 FR 53858 (November 30, 1982). The Effective date has been stayed pending judicial review by an order of the Eleventh Circuit Court of Appeals on April 25, 1983 (No. 82-6787).

drivers to authorized carriers. We found that this administrative prohibition of trip leasing was inconsistent with the Motor Carrier Act of 1980 and the National Transportation Policy. We determined that elimination of this regulatory barrier would permit improvements in operating efficiency and should stimulate competition without compromising highway safety. For similar reasons we now propose to eliminate the requirement at 49 CFR 1057.12(c) that equipment be leased for a minimum duration of 30 days when operated by its owner. By this notice we seek comments on our proposal. We also propose to eliminate the related recordkeeping requirement for the agricultural exemption (49 CFR 1057.25).

DATES: Comments are due September 29, 1983.

ADDRESS: The original and 15 copies of comments should be sent to: Ex Parte No. MC-43 (Sub-No. 15), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, 202-275-7912

or

Mary Kelly, 202-275-7292.

SUPPLEMENTARY INFORMATION: In Ex Parte No. MC-43 (Sub-No. 12), *Leasing Rule Modifications*,¹ we eliminated the 30-day minimum lease requirement from our regulations applicable to private carriers to allow them to trip lease their equipment and drivers to authorized carriers. We found that this administrative prohibition of trip leasing was inconsistent with the Motor Carrier Act of 1980 and the National Transportation Policy. We determined that elimination of this regulatory barrier would permit improvements in operation efficiency and should stimulate competition without compromising highway safety. For similar reasons we now propose to eliminate the requirement at 49 CFR 1057.12(c) that equipment be leased for a minimum duration of 30 days when operated by its owner. By this notice we seek comments on our proposal. The proposed modifications are set forth in the Appendix.

In *Lease and Interchange of Vehicles by Motor Carriers*, 51 M.C.C. 461 (1950), the Commission's Division 5 issued a report on an investigation concerning the lawfulness of the practices of motor common and contract carriers in leasing and interchanging vehicles. A major issue in that report was the extent of the Commission's authority to regulate leasing practices of carriers. Another important issue was whether the hiring of vehicles, with or without drivers,

must be under long-term lease. The evidence consisted generally of improper conditions reported by the Bureau of Motor Carriers' field staff in its 1948 informal investigation of leasing practices. These conditions included falsified drivers' logs, equipment disrepair, and unsafe operating practices. However, this evidence is by no means conclusive in showing that leased vehicles had poorer safety records than owned vehicles. In fact, the evidence presented in the 1950 decision suggests that, if anything, the opposite was true, particularly as regards actual accidents and injuries, as distinguished from violations of ICC recordkeeping requirements.²

The Commission responded to these concerns by imposing additional regulatory constraints on the use of leased equipment. See 49 CFR Part 1057.³ The most controversial provision of the leasing rules required a minimum period of 30 days for parties who wished to execute an equipment and driver lease arrangement. See *Simmons v. King*, 478 F.2d 857, 865-67 and n.22 (5th Cir. 1973), and cases cited therein; *Christian v. United States*, 152 F. Sup. 561, 566-69 (D. Md. 1957); *Lease and Interchange of Vehicles by Motor Carrier*, 68 M.C.C. 553, 555-56 (1956) (all explaining the reasons for the original adoption of the 30 day leasing rule). The only reason given for this minimum leasing period was that some carriers neglected to inspect equipment or to examine driver fitness on trip leases. We do not find the 30-day rule to be an appropriate means of encouraging such inspections. Furthermore, we note that the Department of Transportation, the agency now charged with safety oversight, has advocated elimination of minimum leasing periods in similar proceedings (e.g. Ex Parte No. MC-43 (Sub-No. 12)).

In reviewing the 1950 and 1951⁴ decisions, it is clear that the major concern was not safety, but rather the fact that leasing enabled some carriers to operate more efficiently (balancing traffic flows, filling backhauls, adjusting to demand variations, etc.) and thus to offer lower rates.⁵ This was considered contrary to "sound regulation." This economic concern for preventing competition, rather than the alleged safety concern, appears to have been

the primary motivation for the 30-day rule.⁶

Over the years, however, several exceptions to the 30-day rule have been established. The general leasing requirements contain a provision for trip leasing between authorized carriers.⁷ Additional exemptions from the 30-day requirement appear at 49 CFR 1057.23. This provision permits authorized automobile carriers to trip lease equipment and drivers to other authorized automobile carriers for use in transporting motor vehicles.⁸ The section similarly exempts from the 30-day rule authorized tank truck carriers which seek to trip lease to other authorized tank truck carriers to transport bulk commodities. Finally, the rule allows trip leasing of dump equipment for use in transporting salt and calcium chloride, in bulk, for ice and snow control purposes for a six-month period beginning November 1 of each year.

These exemptions demonstrate that even prior to the procompetitive Motor Carrier Act of 1980, the Commission concluded that the need for efficient transportation operations may outweigh whatever historical concerns prompted the adoption of the 30-day rule.

The same trend is evident in the Commission's 1982 decision in Ex Parte No. 43 (Sub-No. 12), *supra*. In that proceeding, the trip-leasing exemption was amended to allow private carriers to be exempted from the otherwise applicable 30-day period when leasing equipment and drivers to authorized carriers. That decision indicated that the Commission's adoption of the 30-day minimum lease period apparently was based to some extent on safety considerations. Our 1982 decision emphasized the need of private carriers to improve their overall efficiency by trip leasing equipment and drivers to authorized carriers. The Commission also determined that trip leasing would not compromise highway safety.

These exceptions to the general leasing requirement reflect a realization by the Commission that the 30-day leasing rule can work a severe hardship on lessors of equipment who must efficiently and optimally utilize their investments; on lessees, who

¹ The 30-day rule was added in a later proceeding under the same title, 52 M.C.C. 675 (1951). This later proceeding found, at 725, that "carriers which conduct operations entirely, or almost entirely, in nonowned equipment . . . are in an extremely favorable competitive position as compared with carriers having substantial investments in equipment . . ."

² 49 CFR 1057.22.

³ See *Lease and Interchange of Vehicles by Motor Carriers*, 64 M.C.C. 361, 370-371 (1953).

⁴ 51 M.C.C. at 470, 471, 485, 504.

⁵ The Commission's authority to adopt leasing regulations was upheld in *American Trucking Ass'n. v. United States*, 344 U.S. 298 (1953).

⁶ 52 M.C.C. 675 (1951).

⁷ 51 M.C.C. at 471, 473, 475, etc.

individually require specific transportation services attainable by trip leasing; and on the public, which demands a flexible, fluid transportation system for the expeditious movement of consumer and industrial goods.

In 1966 all of the Commission's functions, powers and duties relating to motor vehicle safety were transferred to the Department of Transportation. To the extent that safety concerns were a motivation for the 30-day rule, even if those concerns were still valid, the transfer of safety jurisdiction would make DOT the appropriate agency to maintain such a rule.

Today, much leasing is either exempt from Commission jurisdiction or, by exception, can be effected on a less than 30-day basis. The remaining areas where a 30-day lease is still required may cause significant operating difficulties, primarily for owner-operators and other equipment lessors lacking operating authority. Such difficulties include operating inefficiencies, lost revenues, and lost opportunities for short-term hauling coinciding with equipment repositioning. Owner-operator problems in maintaining a moderate standard of living have been documented in other Commission proceedings.⁶ Owner-operators are on record at numerous public Commission hearings and in complaints registered at the Commission's Small Business Assistance Office as being "slow-loaded". This carrier practice occurs, deliberately or not, by the dispatch of leased equipment, held under a 30-day lease, in a less expeditious manner than owned equipment. For owner-operators who, in almost all cases, generate revenues only when loaded, this practice can result in a potentially sizeable loss of income. Their ability to lease for less than 30 days would offer greater opportunities for individual industriousness in securing short-term traffic when the lessee is unable to provide a load in a timely manner. In a similar vein, carriers with inadequate supplies of equipment will enjoy greater flexibility in performing their operations if they are able to enter into trip-lease agreements with owner-operators as an additional source of low-cost, short-term equipment.

We also believe that the proposal to eliminate the 30-day provision is consistent with the National Transportation Policy, at 49 U.S.C. 10101(a)(2). Subsections (C) and (G) direct the Commission, in regulating

motor carriers, to do so in a manner that will "allow the most productive use of equipment and energy resources" and "improve and maintain a sound, safe, and competitive privately owned motor carrier system." Elimination of the 30-day requirement will foster those goals.

In view of these considerations, the transfer of safety jurisdiction and the extensive exceptions to the uniform application of the 30-day rule, we are not now convinced that there remain compelling reasons for retention of the 30-day rule.

We seek comment on the desirability and utility of rules permitting all equipment and driver leasing to be effected without minimum duration. We are particularly desirous of obtaining comments from owner-operators, as many benefits which may accrue as a result of disposing of the existing 30-day minimum are likely to inure to them. However, due to the nature of their business, owner-operators frequently will not be apprised in a timely manner of administrative developments which may affect them. We ask lessees and trade associations to assist us in our comment and fact-gathering tasks by placing copies of this notice in places likely to be frequented by owner-operators.

Energy and Environmental Considerations

This proposal should not have any significant adverse impact upon the quality of the human environment or conservation of energy resources. Comments on these issues are welcome, however.

Initial Regulatory Flexibility Analysis

Under 5 U.S.C. 601 *et seq.*, we are required to analyze the potential impact of the proposed rule on small entities. This rulemaking is being considered as part of the Commission's ongoing regulatory review process which seeks to eliminate regulations and requirements that are burdensome, nonessential, and/or contrary to National Transportation Policy objectives. We conclude that the proposed rule may have a significant economic impact on a substantial number of small entities. The impacts will be beneficial.

Owner-operators, agricultural cooperatives, corporations, and equipment leasing companies would be beneficially affected by this proposal. The new rule would allow these parties to utilize their equipment more efficiently. Short term hauling to coincide with equipment repositioning would be possible.

Estimates of the number of owner-operators vary because of the high degree of turnover in that occupation. Generally, however, the number of owner-operators has been conservatively estimated and relied upon at 120,000. This number includes those who transport exempt commodities. These owner-operators are virtually without exception small entities as defined by the Small Business Administration. There is no practical way to ascertain the number of other equipment-leasing entities which may be affected by the proposed rule.

Another group of potential beneficiaries are shippers. The number which qualify as small entities cannot be ascertained with degree of accuracy. Shippers, however, are perceived as indirect beneficiaries of the proposed rule, to the extent that they are able to receive more timely, expeditious service by those carriers who would avail themselves of the opportunity to lease equipment for short periods.

We are unaware of any reporting, recordkeeping, or other requirements that would be imposed by the proposed rule. We are similarly unaware of any relevant federal rules which duplicate, overlap, or conflict with the proposed rule.

We are aware of no alternative to the proposed rule which would result in less burden upon small entities. As explained earlier, the inability to lease for less than 30 days reduces operating flexibility. Removal of this obstacle will promote the ability to operate equipment more flexibly and profitably. The proposed rule, because it is permissive, not mandatory, does not require that leases be negotiated for terms of less than 30 days.

List of Subjects in 49 CFR Part 1057

Motor carriers.

Authority: This notice is issued pursuant to 5 U.S.C. 553.

Decided: August 18, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,
Secretary.

Appendix

PART 1057—[AMENDED]

Part 1057 of the Code of Federal Regulations, Title 49, would be amended as follows to reflect the modifications proposed here:

§ 1057.2 [Amended]

1. Section 1057.2 would be amended as follows:

⁶ See Ex Parte No. 311 (Sub. No. 4) *Modification of Motor Carrier Fuel Surcharge Program*, 365 I.C.C. 311 (1981).

a. Paragraph (d) would be amended by removing the words "for a period longer than 30 days."

b. Paragraphs (f) and (g) would be removed.

a. Paragraphs (h), (i), (j), (k), (l), (m), (n), and (o) would be redesignated as paragraphs (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

§ 1057.11 [Amended]

2. Section 1057.11 would be amended as follows:

a. Paragraph (d)(1) would be amended by removing the words "If the equipment is being leased for periods of less than thirty days," from the first sentence and by removing the word "Trip" from the beginning of the last sentence.

b. Paragraph (d)(2) would be removed and reserved.

§ 1057.12 [Amended]

3. Section 1057.12 would be amended as follows:

a. Paragraph (c) would be removed.

b. Paragraph (g) would be amended by removing the words "under permanent or trip lease to the authorized carrier" and the words "by the permanent lease carrier" from the first sentence.

c. Paragraph (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) would be redesignated as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l), respectively.

d. The reference to "paragraph (d)(1)" in the newly redesignated paragraph (c)(3) would be revised to read "paragraph (c)(1)."

e. The reference to "paragraph (e)-(1)" in the newly redesignated paragraph (m) would be revised to read "paragraphs (d)-(k)."

§ 1057.22 [Amended]

4. Section 1057.22 would be amended as follows:

a. The heading would be amended by removing the word "trip".

b. Paragraph (b) would be amended by removing the words "of 30 days or more."

§ 1057.23 [Removed]

5. Section 1057.23 would be removed.

§ 1057.24 [Removed]

6. Section 1057.24 would be removed.

§ 1057.55 [Removed]

7. Section 1057.25 would be removed.

[FR Doc. 83-23775 Filed 8-29-83; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1102

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Extension of Comment Period

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing of comments to notices of proposed rulemaking.

SUMMARY: In decisions served June 20, 1983 and July 25, 1983 (48 FR 29024, June 24, 1983, as supplemented at 48 FR 33932, July 26, 1983), the Commission issued proposals concerning the adoption of a modified version of the "all inclusive" index of railroad costs proposed by the Association of American Railroads. The Commission established August 23, 1983 as the due date for comments in this proceeding. The American Iron and Steel Institute, because of difficulties encountered with certain labor cost data, has requested an extension to September 13, 1983. Considering the nature of the request the extension appears to be warranted and is granted.

DATE: Comments are due September 13, 1983.

FOR FURTHER INFORMATION CONTACT:

William T. Bono (202) 275-7354
Robert C. Hasek (202) 275-0938

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: August 22, 1983.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-23772 Filed 8-29-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 30802-148]

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule and requests comments on the rule. The rule would revise the conditions that require redeterminations of domestic annual processing capacity in the Atlantic silver and red hake fishery. The rule is intended to minimize administrative procedures and provide opportunity for public comment on

redeterminations of domestic processing capacity.

DATES: Comments on the proposed rule must be submitted on or before September 29, 1983.

ADDRESSES: Send comments to Frank Grice, Chief, Management Division, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097.

FOR FURTHER INFORMATION CONTACT:

Peter D. Colosi, Jr. (Atlantic hake plan coordinator), 617-281-3600.

SUPPLEMENTARY INFORMATION: The foreign fisheries for Atlantic silver and red hake have been governed since 1977 by the Preliminary Fishery Management Plan for the Hake Fisheries of the Northwestern Atlantic (PMP), and by the foreign fishing regulations (50 CFR 611.53) that implement the PMP.

Paragraphs 611.53 (b) and (c) now provide that, upon receipt of a foreign fishing permit application for a joint venture (i.e., a foreign processing vessel receiving U.S.-harvested fish) involving Atlantic silver or red hake, the Director, Northwest Region, National Marine Fisheries Service, (NMFS) shall make an updated estimate of domestic annual processing capacity (DAP) and publish it in the Federal Register. A determination and notice must be published each time an application is received. If the new DAP estimate is less than the initial estimate of domestic annual harvest (DAH) (plus any reserve), then the "surplus" U.S. harvest is available for joint venture processing (JVP). If the new DAP estimate is equal to or greater than the initial DAH (plus any reserve), then no U.S.-harvested fish may be made available for joint venture processing.

A recent amendment to the PMP (48 FR 414) specified DAPs for the Georges Bank and Southern New England/Mid-Atlantic management units of silver hake which are less than the corresponding DAHs; these excess amounts of the U.S. harvests may be available for joint ventures. These proposed regulations would simplify procedures contained in § 611.53 (b) and (c) for handling joint-venture applications. In the event foreign fishing applications for joint ventures involving Atlantic hake are received and a surplus U.S. harvest has been identified in the PMP, the formal procedures proposed by § 611.53(b) would not be instituted prior to approval of such applications. However, if a joint venture permit application is received and if the amount of U.S.-harvested hake requested by the applicant exceeds the amount of JVP that can be made

available to the applicant, the Secretary will reassess DAP for hake to determine whether additional JVP may be made available.

NOAA proposes to clarify the definition of JVP in § 611.53(a) and to revise § 611.53(c) further to provide for public comment on redetermination of DAP estimates (i.e., whether and to what extent U.S.-harvested hake will be processed by U.S. fish processors). This will increase the opportunity for public participation in the process of reviewing joint venture permit applications in this fishery and will increase the information available to the Regional Director in revising DAP estimates.

Classification

On October 5, 1982, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined, based upon an environmental assessment, that there will be no significant environmental impact resulting from this action. Accordingly, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

The proposed revision of 50 CFR 611.53 represents procedural changes designed to (1) reduce the frequency of determinations of DAP and (2) provide for public comment in this procedure. These procedural adjustments are of a housekeeping nature and will have no economic impacts. The Assistant Administrator has determined, based upon the fact that this regulatory change is within the scope of the approved PMP and is for housekeeping reasons, that this action is not major under Executive Order 12291. Accordingly, preparation of a regulatory impact analysis is not required.

Voluntary telephone surveys of projected domestic harvesting and processing capacity will be conducted two or three times a year. NOAA has requested approval from the Office of Management and Budget (OMB) to include the burden hours for this telephone survey under OMB #0648-0114. Voluntary catch reports on hakes are submitted to NOAA under the Three-Tier Fisheries Information Collection System (OMB #0648-0016). No incremental increase of burden hours for the voluntary reporting would result if this rule were made final.

The General Counsel for the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: August 24, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For the reasons set out in the preamble, Part 611, Subpart C, of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Section 611.53 is revised to read as follows:

§ 611.53 Hake fishery.

(a) *Definitions.* For purposes of this section, (1) JVP means the estimated U.S. harvest of hakes in excess of the amount which can and will be utilized by U.S. fish processors; JVP may be available for transfer to foreign-flag processing vessels; and (2) DAP means the part of the estimated U.S. harvest of hake which can and will be utilized by U.S. fish processors.

(b) *Procedures to reassess DAP.* (1) *Preliminary reassessment.* (i) If a foreign fishing permit application is received for a joint venture, and if the amount of U.S.-harvested hake requested by the applicant exceeds the amount of JVP that can be made available to the applicant, the Secretary will reassess DAP for hake to determine whether additional JVP may be made available.

(ii) The Secretary will consult with the New England and Mid-Atlantic Fishery Management Councils and consider the following factors in making the reassessment:

(A) U.S. catch and participation in the fishery to date;

(B) Projected U.S. catch and participation in the fishery for the remainder of the fishing year;

(C) U.S. processing performance to date; and

(D) Projected U.S. processing performance for the remainder of the fishing year.

(iii) The preliminary reassessment will be published in the *Federal Register*. A public comment period of 15 days will be provided.

(2) *Final reassessment.* The Secretary will make a final reassessment of DAP after taking into consideration all information received under paragraph (b)(1)(iii) of this section, all factors

considered in making the preliminary reassessment under paragraph (b)(1)(ii) of this section, and any additional relevant information that may become available. The final reassessment will be published in the *Federal Register* with the reasons for the determination.

(3) *Availability of data.* All data relevant to the reassessment will be available in aggregate form for public review at the Regional Director's office during the public comment period.

[FR Doc. 83-23784 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-22-M

50 CFR PART 638

[Docket No. 30803-149]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic; Implementation of Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has approved the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). NOAA announces that copies of the FMP are available, issues this proposed rulemaking to implement the FMP, and requests comments on the FMP and implementing regulations. The FMP and proposed implementing regulations would (1) establish unique habitat areas of particular concern for coral which are currently or potentially threatened, (2) prohibit the taking or destruction of certain coral except under permit, and (3) provide permit systems for the taking of certain coral for scientific and education purposes and harvesting fish or other marine organisms with toxic chemicals in coral habitat. This action is made necessary by the susceptibility of the coral to physical and biological degradation. The intended effect of the regulations is to optimize the benefits from the coral resources while conserving the coral and coral reefs.

DATE: Comments on the FMP and proposed rule must be received on or before October 14, 1983.

ADDRESSES: Comments and requests for copies of the FMP and the regulatory impact review/initial regulatory flexibility analysis should be sent to Jack T. Brawner, Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Comments on the collection of information

requirement should be sent to: Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for NOAA, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) approved the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP), on July 27, 1983, under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). These proposed regulations implement the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils).

The FMP manages coral resources throughout the fishery conservation zone (FCZ) off the southern Atlantic coastal States from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The management unit consists of the coral and coral reefs throughout this area of the FCZ. Included in this management unit are the corals of the class Hydrozoa (stinging and hydrocorals), the class Anthozoa (sea fans, whips, precious corals, sea pen, and stony coral), and the hard bottoms, deepwater banks, patch reefs, and outer bank reefs as defined in the FMP.

Background

These coral resources are unique in several respects. First is their acute vulnerability to physical and biological degradation. Most of the corals within the management area are at the northern extreme of their range and, therefore, are particularly susceptible to stresses resulting from fluctuating environmental conditions or man-induced activities. Further, researchers have found that many species of coral have extremely slow growth rates. If damaged, such species would not fully recover for many years. Second, unlike other fishery resources, coral and coral reefs are valued mostly for their nonconsumptive uses. The most significant value of coral is the habitat it provides for numerous other fishery resources of recreational and commercial importance, e.g., snapper, grouper, lobster, and shrimp. Many businesses including dive shops, charterboat operations, and tropical fish collectors also depend on the nonconsumptive use of the corals, as do many recreational participants.

The exact magnitude of the total yearly harvest of corals is not known. Available data indicate that the harvest

of stony corals for scientific and educational purposes is approximately 140 kilograms (309 lbs.) per year. An estimated 5,845 colonies of octocorals are also harvested annually by commercial fishermen for use in the aquarium trade. The recent discovery of medically important hormones in certain octocorals presents a potential for their large-scale harvest for use by the pharmaceutical industry.

State regulation of coral is exercised in the management area only by Florida, which prohibits the taking, destroying, or selling of live sea fans, hard or stony corals, and fire coral.

Optimum yield

Due to the lack of essential data on growth, mortality, abundance, and recruitment, a maximum sustainable yield (MSY) could not be calculated for the management unit. Optimum yield (OY), therefore, was established by the Councils as that level of harvest as authorized under the criteria established in the FMP. It is the Councils' intent to allow the existing level of legal, reported harvest of coral consistent with the objectives of the FMP. OY for stony corals is to be zero (0) except as may be authorized for scientific and educational purposes (estimated to be about 140 kilograms [309 lbs. per year]). One reason for this OY for stony coral is their slow growth and nonconsumptive value as fishery habitat. OY for octocorals is the amount of harvest authorized under the FMP. It is to be all octocorals (except sea fans) that are harvested by U.S. fishermen and is estimated to be about 5,845 colonies annually, approximately 1,463 of which come from the FCZ. Domestic users have the capacity and intent to harvest the available OY. Therefore, there is no surplus available to foreign fishermen.

Permits

A permit system is established for the taking of prohibited corals for scientific and educational purposes. Prohibited corals include species belonging to the classes Hydrozoa (fire corals and hydrocorals) and Anthozoa (stony corals and black corals), sea fans, and all corals and coral reefs in the Flower Garden Banks and Florida Middle Grounds habitat areas of particular concern (HAPCs). Permits will also be required for use of toxic chemicals for the harvest of fish or other marine organisms in the area of coral or coral reefs. Federal permits will be issued by the Regional Director, Southeast Region, National Marine Fisheries Service (NMFS), or his designee. The collection of information involved in the permit application process has been approved

by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and has been assigned the OMB control #0648-0097; the approval is effective through March 31, 1986.

Permits issued by the State of Florida under their existing permit system will be acceptable in lieu of a Federal permit for harvesting fish or other marine organisms with toxic chemicals near coral or coral reefs in the FCZ. The requirements for permits will aid enforcement of these regulations and will provide a control mechanism for the harvest of coral resources.

Statistical reporting

Information is needed on the harvesting and use of coral and coral reefs for the proper management of this resource. Reports will be required, therefore, from all permit holders who are authorized to take prohibited coral. These reports will be submitted to the Center Director, Southeast Fisheries Center, NMFS or to the Florida Department of Natural Resources (if that State agency issued the permit) with copies provided to NMFS by the State. (Information request is pending OMB approval).

Harvest restrictions

The taking of prohibited corals or the destruction of these corals or coral reefs will be prohibited in the FCZ except as authorized by a permit issued under these regulations. Prohibited corals taken incidentally in other fisheries must be returned to the water in the general area of capture as soon as possible. An exception to this requirement is provided for the groundfish, scallop, and other fisheries where the entire unsorted catch is landed. Corals taken under this exception may not be sold or traded.

There are no restrictions on the taking of octocorals, other than sea fans, under these proposed regulations except in the Florida Middle Grounds and the Flower Garden Banks HAPCs. Should the harvesting of unprotected octocorals increase to a level which is the Council's judgment is threatening the habitat, the Councils may request the Secretary to take available measures to eliminate such threat of damage to the resource and fishery habitat.

Area limitations

Eight areas are identified as proposed HAPCs. These are specific areas where large concentrations of adult (sedentary) coral are found that are of special biological significance, or that are currently or potentially threatened with

destruction or degradation. Five of these areas are under control of Federal or State entities or designated for such control, and no additional protection is required. Three areas that are not presently designated for any control are the Florida Middle Grounds, the Flower Garden Banks, and the *Oculina* Banks. These areas are not protected, therefore, from exploitation or human impacts. The HAPCs contain outstanding coral community types that provide valuable ecological conditions for species of fish and invertebrates, are of esthetic value to recreational divers, and are valuable for scientific and educational research purposes.

The Flower Garden Banks HAPC is located approximately 110 nautical miles southeast of Galveston, Texas. This area has the most northwestern located coral reefs in the Gulf of Mexico and comprises a unique resource. As such, the area is of significant research interest. It is proposed to prohibit the use of bottom longlines, traps and pots, and bottom trawls within the 50-fathom isobath, and the taking of all corals except by permit.

The Florida Middle Grounds HAPC covers approximately 326 square nautical miles and is located about 87 nautical miles west-northwest of Tampa, Florida. Octocorals, a relatively minor component of other Gulf of Mexico reefs, are prominent in this HAPC. The area provides habitat for commercial fish populations, including red snapper and grouper that are heavily utilized by the commercial fishery. Fishery with bottom longlines, traps and pots, bottom trawls, and taking of all coral except by permit will be prohibited.

The *Oculina* Bank HAPC covers 92 square nautical miles and is located approximately 15 nautical miles east of Fort Pierce, Florida. This shelf-edge strip of coral reefs is composed of banks, thickets, and rubble zones of *Oculina varicosa* (ivory tree coral). The *Oculina* reefs are a unique ecosystem. They are monospecific, i.e., comprised of a single species of colonial coral. These are the only such reefs known to exist on the south Atlantic continental shelf. They support substantial commercial and recreational fisheries for grouper, snapper, and sea bass. Bottom longlines, fish traps or pots, dredges, and bottom trawls will be prohibited within the HAPC to protect this fragile coral.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that the FMP complies with the national standards, other provisions of the

Magnuson Act, and other applicable law.

The adoption and implementation of the FMP is a major Federal action that will have a significant impact on the quality of the human environment. Under the National Environmental Policy Act and NOAA Directive 02-10, the Councils prepared a draft environmental impact statement for this FMP, which was filed with the Environmental Protection Agency. The notice of availability was published on December 18, 1981 (46 FR 81713).

The Administrator, NOAA, has determined that these proposed regulations are not major under Executive Order 12291. A regulatory impact review (RIR) has been prepared that analyzes the expected benefits and costs of the regulatory action. The review provides the basis for the Administrator's determination. The FMP's management measures are designed to maintain corals and coral reefs as habitat for marine resources and for their aesthetic value.

The RIR indicates that the proposed regulations will result in benefits to the nonconsumptive users such as scuba divers and the commercial and recreational fishermen who target fishery resources dependent on the coral habitat. The annual value of the fish and shellfish whose life cycle is critically dependent upon coral and coral reef habitat is conservatively estimated to be in excess of \$300,000,000. The coral and coral reefs, except for those in areas under oil and gas lease or exploration permit, are unprotected in the FCZ. Large-scale coral harvesting would threaten several major fish and shellfish fisheries as well as the nonconsumptive value derived from coral.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

These regulations will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. An initial regulatory flexibility analysis has been prepared in compliance with the Regulatory Flexibility Act and has been combined with the RIR summarized above.

The Coastal Zone Management offices from each State having an approved program under the Coastal Zone Management Act and whose territorial waters are adjacent to the management area were provided copies of the FMP and a consistency determination for

review as to consistency with their coastal zone management programs. The State of Florida has determined that the FMP is inconsistent with the approved Florida coastal management plan. The States of Georgia and Texas do not have approved programs. It has been concluded by the Agency, however, that to the maximum extent practicable the Agency action is consistent with the applicable coastal zone management programs.

List of Subjects in 50 CFR Part 638

Fish, Fisheries, Fishing.

Dated: August 24, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

50 CFR is proposed to be amended by adding a new Part 638 to read as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

- 638.1 Purpose and scope.
- 638.2 Definitions.
- 638.3 Relation to other laws.
- 638.4 Permits and fees.
- 638.5 Prohibitions.
- 638.6 Facilitation of enforcement.
- 638.7 Penalties.

Subpart B—Management Measures

- 638.20 Seasons.
- 638.21 Harvest limitations.
- 638.22 Area, time limitations.
- 638.23 Gear limitations.
- 638.24 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 638.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs (FMP) developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for coral and coral reefs by fishing vessels of the United States within the fishery conservation zone off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

§ 638.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings—

Authorized officer means—

(a) Any commissioned, warrant or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-361-5761.

Fish includes the hard and soft corals of the class Hydrozoa (stinging and hydrocorals), and the class Anthozoa (sea fans, whips, precious corals, sea pen, and stony corals).

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

HAPC means coral habitat areas of particular concern.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Management area means that area of the FCZ off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any character of the vessel, whether bareboat, time or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Prohibited coral means (a) species of coral belonging to the class Hydrozoa (fire corals and hydrocorals) and class Anthozoa, subclass Scleractinia (stony corals and black corals), and sea fans (*Gorgonia flabellum* or *G. ventalina*), and (b) all coral and coral reefs in the HAPCs.

Regional Director means the Regional Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, telephone 813-893-3141; or a designee.

Scientific and educational purpose means for the purpose of gaining knowledge of coral for management and/or for the benefit of science and humanity.

Secretary means the Secretary of Commerce or a designee.

Take means to damage, harm, kill, or collect, or attempt to damage, harm, kill, or collect.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 638.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) These regulations are intended to apply within the FCZ portion of the following National Marine Sanctuaries and National Parks unless regulations establishing such Sanctuaries and/or Parks prohibit their application:

(1) Everglades National Park (36 CFR 7.45);

(2) Looe Key National Marine Sanctuary (15 CFR Part 937);

(3) Fort Jefferson National Monument (36 CFR Part 7.27);

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR Part 929);

(5) Biscayne National Park (16 U.S.C. 410gg);

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(7) Monitor Marine Sanctuary (15 CFR Part 924).

(c) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State and the Secretary.

§ 638.4 Permits and fees.

(a) **General.** Permits are required for persons—

(1) Fishing for prohibited coral; or

(2) Using toxic chemicals to collect fish (other than as defined at § 638.2) or other marine organisms in coral areas. A State of Florida permit is acceptable in lieu of a Federal permit for use of toxic chemicals.

(b) **Eligibility.** Fishing for prohibited coral must be for a scientific or educational purpose.

(c) **Fees.** There are no fees for Federal permits.

(d) **Application for a prohibited coral permit.** An application for a permit to fish for prohibited coral must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information—

(1) Name, address, and telephone number of applicant;

(2) Name and address of harvester, company, institution, or affiliation;

(3) Amount of coral to be fished for by species;

(4) Size of each species;

(5) Projected use of each species;

(6) Collection techniques (vessel types, gear, number of trips);

(7) Period of fishing; and

(8) Location of fishing.

(e) *Application for toxic chemical permit.* An application for a Federal permit to collect fish (other than as defined at § 638.2) or other organisms with toxic chemicals in coral areas must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone number of applicant;

(2) Name and address of harvester, if other than applicant;

(3) Type of chemical;

(4) Period of fishing; and

(5) Location of fishing.

(f) *Permit conditions.* (1) Permits may not be transferred or assigned;

(2) Permits must be in the possession of the permittee while fishing for prohibited corals or using toxic chemicals;

(3) Permits must be presented for inspection upon request of any authorized officer;

(4) A permittee must have in possession sufficient documentation to establish identity as permittee (e.g., valid drivers license, etc.); and

(5) Other specific conditions may be listed on the permits.

(g) Unless otherwise specified, application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires to have the permit effective, and permits will be issued for the period October 1 through the following September.

(Approved by the Office of Management and Budget under OMB control number 0648-0097.)

(h) All persons holding permits to take prohibited corals for scientific or educational purposes must submit annual reports of their harvest to the Center Director within 30 days following the effective period for the permit. Specific reporting requirements will be provided with the issued permit.

(Information request is pending OMB approval).

§ 638.5 Prohibitions.

It is unlawful for any person to—

(a) Fail to submit a report within 30 days following the effective period for a permit as specified in § 638.4;

(b) Take or collect fish or other marine organisms with toxic chemicals in coral areas except with a permit as specified in § 638.4;

(c) Fish of prohibited coral except as specified in § 638.4 and § 638.21;

(d) Fail to comply immediately with enforcement and boarding procedures specified in § 638.6;

(e) Use bottom longlines, traps, pots, bottom trawls, or dredges in a HAPC as specified in § 638.22;

(f) Possesses, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, trade, or export any coral taken or retained in violation of the Magnuson Act, this part, or any other regulation or permit issued to a foreign vessel under the Magnuson Act;

(g) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part, or any other regulation or permit issued under the Magnuson Act;

(h) Forcibly to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (g) of this section;

(i) Resist a lawful arrest for any act prohibited by this part;

(j) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(k) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under § 204 of the Magnuson Act which authorize the receipt by such vessel of the U.S.-harvested fish of the species concerned; and

(l) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 638.6 Facilitation of enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part must immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, permit and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel must be alert for signals conveying enforcement instructions. The following signals taken from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you,"

(3) "AA AA AA etc." which is the call to an unknown station, to which the signaled vessel should respond by illuminating the vessel registration number, and

(4) "RY-CY" meaning you should proceed at a slow speed. A boat is coming to you.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding must—

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) Provide a safe ladder for the authorized officer and his party, when applicable;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the authorized officer and his party to facilitate the boarding.

§ 638.7 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, 50 CFR Part 620 (Citations), 15 CFR Part 904 (Civil Procedures) and to other applicable law.

Subpart B—Management Measures

§ 638.20 Seasons.

The fishing year for all species of coral and coral resources begins at 0001 hours on October 1 and ends at 2400 hours on September 30.

§ 638.21 Harvest limitations.

(a) No person may fish for prohibited coral or fish with toxic chemicals in any coral area unless such person has in possession a valid permit issued under to § 638.4.

(b) Prohibited coral taken as incidental catch to other fishing activities must be returned to the water in the general area of fishing as soon as possible. In those fisheries, such as scallop and groundfish, where the entire catch is landed, unsorted prohibited coral may be landed but not sold or traded.

§ 638.22 Area, time limitations.

The following coral HAPCs are established—

(a) *West and East Flower Garden Banks.* The geographical center point of the West Flower Garden Bank (Figures 1A and 1B) are located at 27° 52' 14.21" N. latitude, 93° 48' 54.79" W. longitude. The geographical center point of the

East Flower Garden Bank (Figures 1A and 1B), are located at 27° 55'07.44" N. latitude, 93° 36'08.49" W. longitude. The HAPC is limited to the portions of each bank shallower than the 50 fathom (300 foot) isobath. The following restrictions apply within the West and East Flower HAPC:

(1) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(2) Bottom longlines, traps, pots, and bottom trawls may not be fished in the area above 50 fathoms (300 feet) in depth.

(b) *Florida Middle Grounds.* (1) The area (Figure 2) is bounded by straight lines connecting the following points:

Point

A—28° 42.5' N. latitude, 84° 24.8' W. longitude

B—28° 42.5' N. latitude, 84° 16.3' W. longitude

C—28° 11.0' N. latitude, 84° 0.0' W. longitude

D—28° 11.0' N. latitude, 84° 7.0' W. longitude

E—28° 26.6' N. latitude, 84° 24.8' W. longitude

A—28° 42.5' N. latitude, 84° 24.8' W. longitude

(2) The following restrictions apply within the Florida Middle Grounds HAPC:

(i) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4; and

(ii) Bottom longlines, traps, pots, and bottom trawls may not be fished within the area.

(c) *The Oculina Bank.* The area is located approximately 15 nautical miles east of Fort Pierce, Florida, at its nearest

point to shore. The area is bounded on the north by 27° 53' N. latitude; on the south by 27° 30' N. latitude; on the east by 79° 56' W. longitude; on the west by 80° 0' W. longitude (Figure 3). The following restrictions apply within the *Oculina* Bank HAPC: Bottom longlines, traps, pots, dredges, and bottom trawls may not be fished.

§ 638.23 Gear limitations.

Toxic chemicals may not be used in taking fish or other marine organisms in or on coral reef habitat except as may be specified by a permit issued under § 638.4.

§ 638.24 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

BILLING CODE 3510-22-M

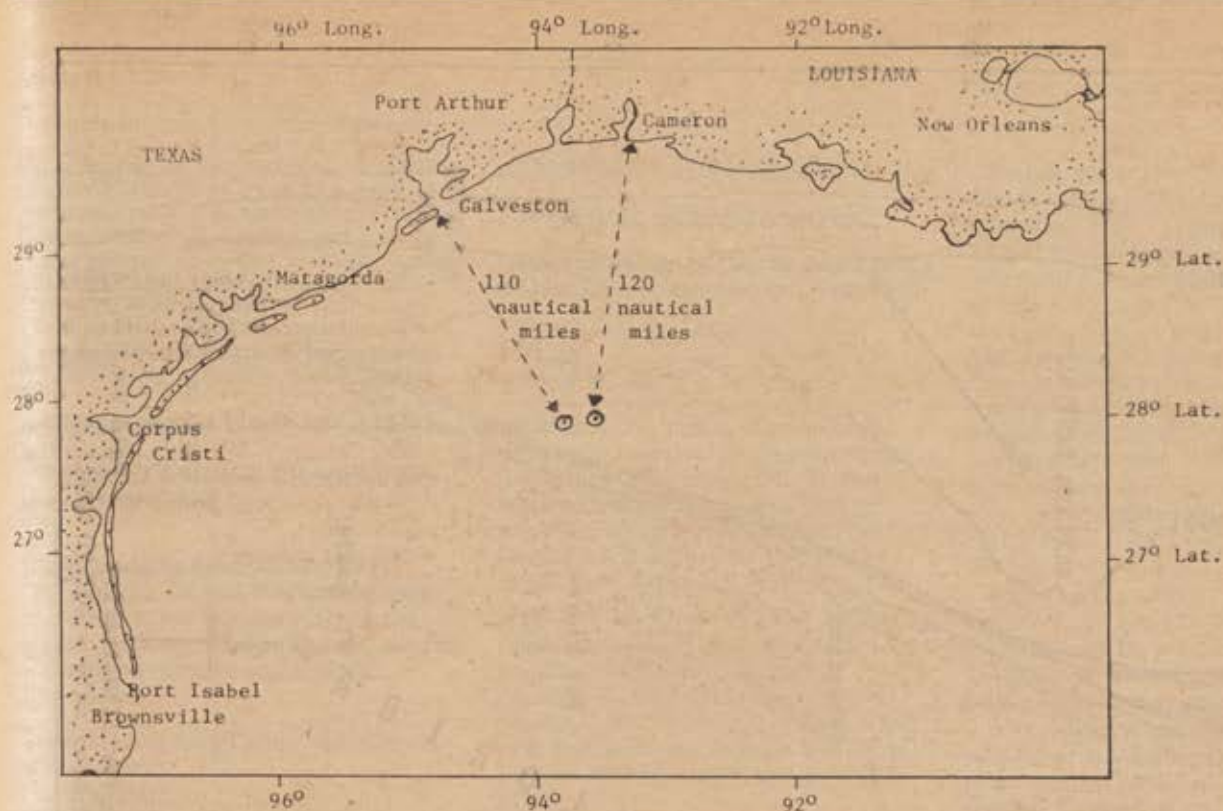


Figure 1A EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

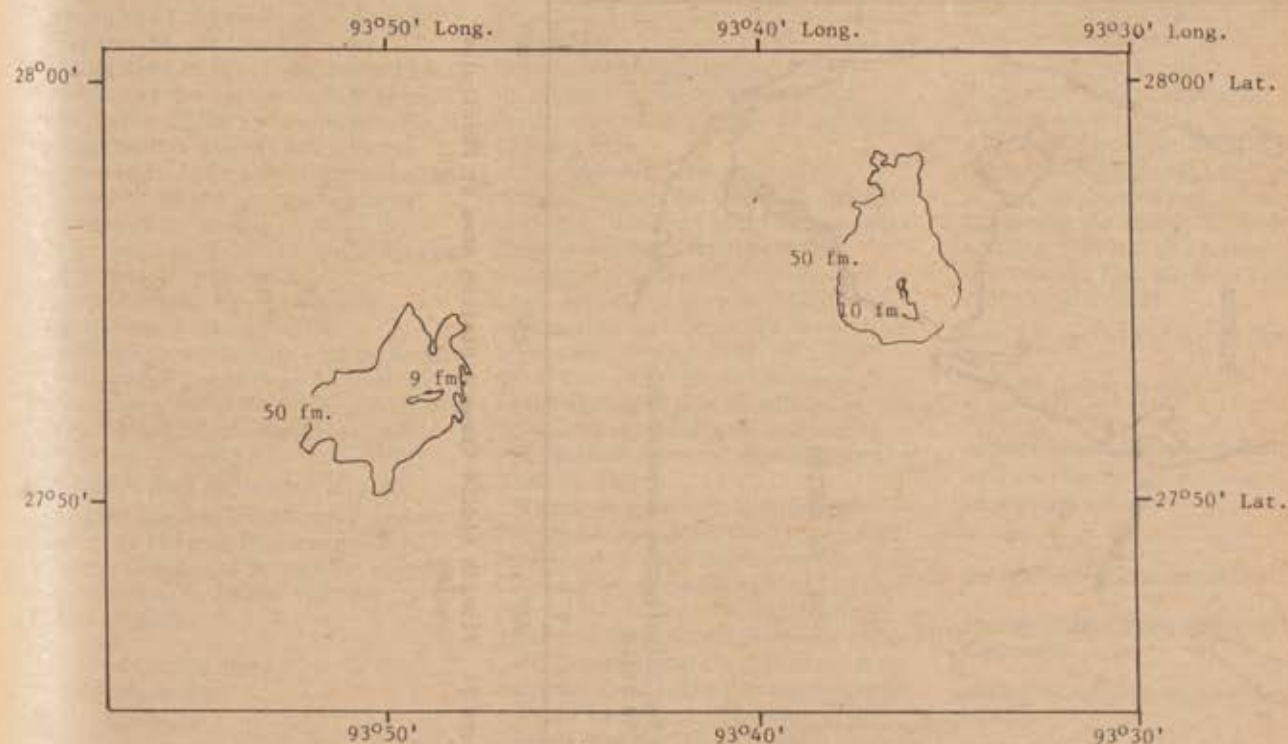


Figure 1B EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

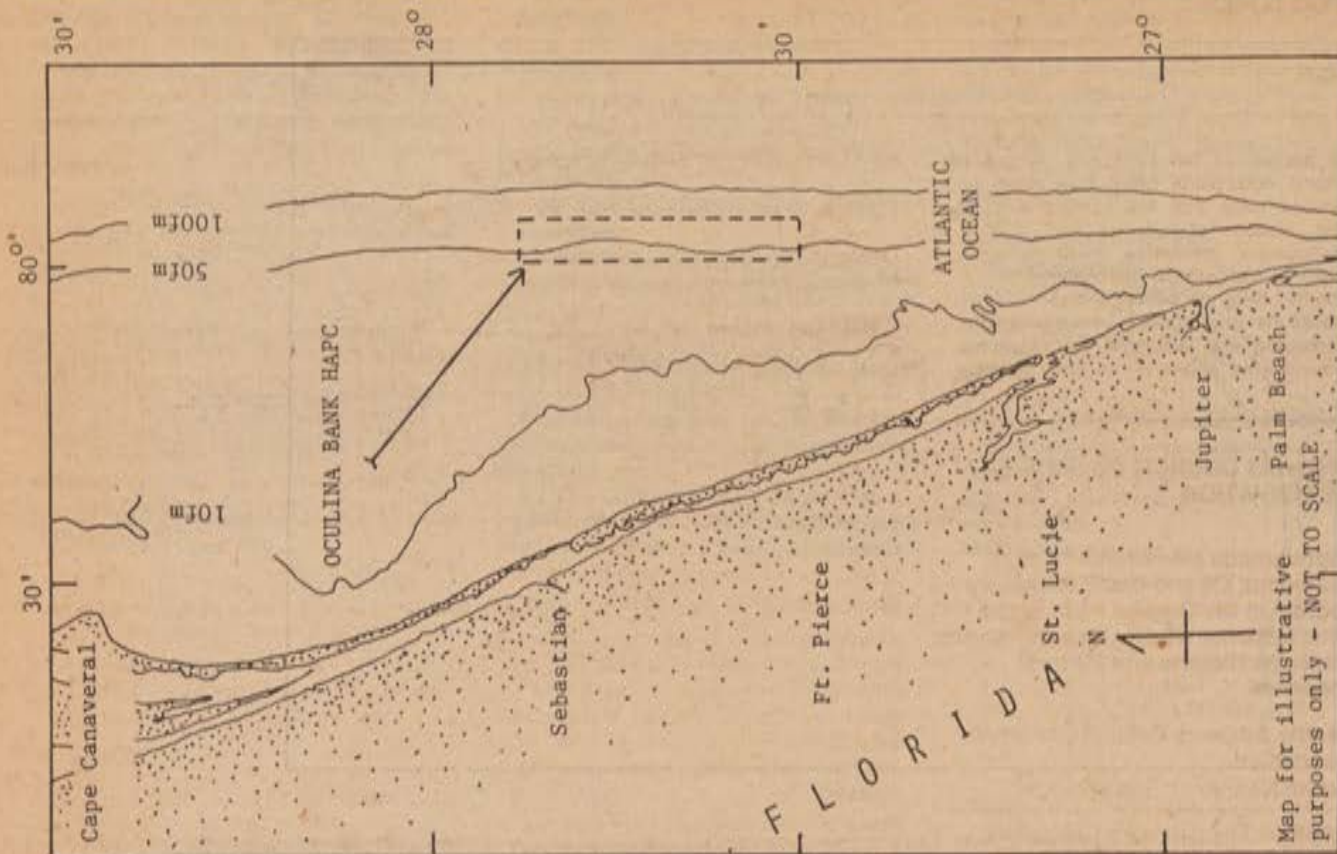


Figure 3. Oculina Bank Habitat Area of Particular Concern.

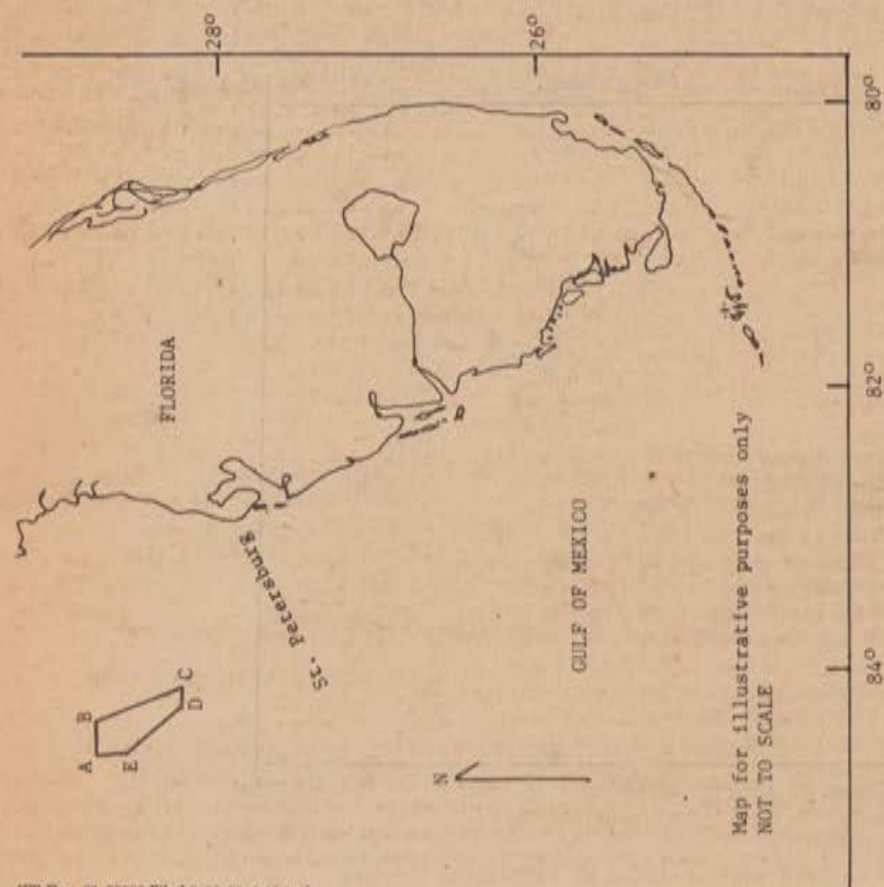


Figure 2. Florida Middle Grounds Habitat Area of Particular Concern

Notices

Federal Register

Vol. 48, No. 169

Tuesday, August 30, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Oil and Gas Exploratory Program in the Coastal Plain of the Arctic National Wildlife Refuge, Alaska; Effects on Historic and Cultural Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Fish and Wildlife Service, U.S. Department of the Interior, and the Alaska State Historic Preservation Officer, providing for the management of historic and cultural properties, including archeological sites, affected by oil and gas exploratory activities in the Coastal Plain of the Arctic National Wildlife Refuge, Alaska. The proposed Programmatic Memorandum of Agreement will establish mechanisms for the identification, evaluation, and protection of such properties in order to meet the requirements of Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f).

COMMENTS DUE: September 29, 1983.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401.

Dated: August 24, 1983.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 83-23701 Filed 8-29-83; 8:45 am]
BILLING CODE 4310-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Fremont Grain Inspection Department, Inc., Nebraska

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Fremont Grain Inspection Department, Inc. (Fremont), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: September 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The March 1, 1983, issue of the *Federal Register* (48 FR 8519), and as corrected, the April 1, 1983, issue of the *Federal Register* (48 FR 14017), contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Fremont's designation terminated on August 31, 1983, and requesting applications for designation as the agency to provide official services within the specified geographic area. Applications were to be postmarked by April 15, 1983.

There were two applicants for the Fremont designation. Fremont applied for the entire geographic area. The Sioux City Inspection and Weighing Agency, Inc., an official agency, applied for a portion of the Fremont geographic area.

FGIS announced the names of these applicants and requested comments on same in the May 2, 1983, issue of the *Federal Register* (48 FR 19762). Comments were to be postmarked by June 16, 1983.

No comments were received regarding the applicants for the Fremont geographic area.

FGIS has evaluated all available information, regarding the designation criteria in Section 7(f)(1)(A) of the Act and in accordance with Section 7(f)(1)(B), and has determined that Fremont is better able than any other applicant to provide official services in the geographic area for which its designation is being renewed. The assigned area is the entire geographic area, as previously described in the March 1 and April 1 *Federal Register* issues.

Effective September 1, 1983, and terminating August 31, 1986, the responsibility for providing official inspection services in the specified geographic area is assigned to Fremont.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, the agencies will provide official services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address: Fremont Grain Inspection Department, Inc., 603 East Dodge Street, Fremont, NE 68025.

(Sec. 8, Pub. L. 94-562, 90 Stat. 2873 (7 U.S.C. 79))

Dated: August 25, 1983.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 83-23705 Filed 8-29-83; 8:45 am]

BILLING CODE 3410-02-M

Soil Conservation Service

Lower Silver Creek Watershed, California

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: Eugene Andreuccetti, responsible Federal official for projects administered under the provisions of Public Law 83-568, 16 U.S.C. 1001-1008, in the State of California, is hereby providing notification that a record of decision to proceed with the installation of the Lower Silver Creek Watershed project is available. Single copies of this record of decision may be obtained from Eugene Andreuccetti at the address shown below.

FOR FURTHER INFORMATION CONTACT:

Eugene Andreuccetti, State Conservationist, Soil Conservation Service, 2829 Chiles Road, Davis, California 95618, telephone (916) 449-2848.

(Catalog of Federal Domestic Assistance Program No. 3D.904, Watershed Protection and Flood Prevention, Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 24, 1983

Paul H. Calverley,

Acting State Conservationist.

(FR Doc. 83-23745 Filed 8-29-83; 8:45 am)

BILLING CODE 3410-16-M

Dunn-Gilmore Critical Area Treatment RC&D Measure, Florida; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dunn-Gilmore Critical Area Treatment RC&D Measure, Walton County, Florida.

FOR FURTHER INFORMATION CONTACT:

James W. Mitchell, State Conservationist, Soil Conservation Service, P.O. Box 1298, Gainesville, Florida 32602, telephone (904) 377-0946.

SUPPLEMENTARY INFORMATION:

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James W. Mitchell, State Conservationist, has determined that the preparation and review of the environmental impact statement are not needed for this project.

The project concerns a plan for critical area treatment. The planned works of improvement include a sediment basin and critical area planting.

Dunn-Gilmore Critical Area Treatment RC&D Measure, Florida; Notice of a Finding of No Significant Impact

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting James W. Mitchell.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 1D.091, Resource Conservation and Development Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 23, 1983.

James W. Mitchell,

State Conservationist.

(FR Doc. 83-23713 Filed 8-29-83; 8:45 am)

BILLING CODE 3410-16-M

Parksley Park Land Drainage RC&D Measure, Virginia; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Parksley Park Land Drainage RC&D Measure, Accomack County, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, P.O. Box 10026, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that

the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land drainage of the Parksley Park to allow better utilization of the area. The park is located in the Town of Parksley, Accomack County, Virginia. The planned work will include the installation of about 300 feet of 21-inch diameter drain, 970 feet of 5-inch drain and about 1.4 acres of land smoothing and seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 1D.901, Resource Conservation and Development Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 22, 1983.

Manly S. Wilder,

State Conservationist.

(FR Doc. 83-23721 Filed 8-29-83; 8:45 am)

BILLING CODE 3410-16-M

Mohawk Valley School Water Quality Management RC&D Measure Plan; Arizona

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:

Verne M. Bathurst, State Conservationist, Soil Conservation Service, 230 North First Avenue, Room 3008, Phoenix, Arizona 85025. Telephone: (602) 261-6711.

Notice: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40

CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mohawk Valley School Water Quality Management RC&D Measure Plan, Arizona.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Verne M. Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the improvement of an irrigation system in order to reduce the amount of salt being leached into the water table.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne M. Bathurst. The FNSI has been sent to various federal, state and local agencies and interested parties. A limited number of copies of the FNSI are available, to fill single copy requests, at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

Dated: August 18, 1983.

Verne M. Bathurst,
State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10-901, Resource Conservation and Development Program, Office of Management and Budget Circular A95, regarding state and local clearinghouse review of federal and federally assisted programs and projects, is applicable)

Finding of No Significant Impact; Mohawk Valley School Water Quality Management RC&D Measure Plan

May 27, 1983.

Inasmuch as the environmental assessment, appended to and made a part of this document, indicates that this federal action will not cause significant local, regional or national impacts on the environment, an environmental impact statement will not be prepared.

The project calls for constructing an irrigation system on the Mohawk Valley School grounds to reduce salt leaching into the water table.

Short-term and long-term effects from installation of the facility are generally beneficial or not significant.

Basic data developed during the environmental assessment may be reviewed

by contacting Verne M. Bathurst, State Conservationist, Soil Conservation Service, 230 North First Avenue, Room 3008, Phoenix, Arizona 85025 (602) 261-6711.

Mr. Bathurst has determined that preparation and review of an environmental impact statement are not needed for this RC&D measure.

Environmental Assessment Mohawk Valley School Water Quality Management RC&D Measure Plan

I. Project Setting: The proposed measure is located in Yuma County, Arizona. It is one mile east of Roll, Arizona. The soils are silt loam with very fine sandy loam to 60 inches or more.

II. Problem and Opportunity Identification: The primary purpose of the measure is to develop an irrigation system that will efficiently and uniformly apply irrigation water. This will reduce deep percolation and the movement of salt into the valley water table.

III. Inventory and Analysis of Resources: This measure will have no adverse impact on the environment. There is no natural wildlife habitat. It is a school ground sowed to bermuda grass, mulberry trees, eucalyptus trees, oleander and other exotic ornamentals.

Cropland: No cropland is involved.

Cultural Resources: There are no historical, archaeological or other cultural resources on the measure site.

Environment: There will be no adverse impact on the environment.

Endangered and Threatened Species: There were no endangered or threatened species identified on the site.

Forecasted Changes: Changes which should occur with installation of measure features:

1. 20 acre feet of water will be conserved.
2. 20 tons of salt now carried into the water table will be stopped.
3. Reduce labor costs.
4. Eliminate irrigation scheduling problems.

IV. Formulation of Alternatives: Planning was dictated by the objectives set forth by the Mohawk Valley School officials. The alternatives considered were:

1. No action.
2. Discontinue irrigation.
3. Install concrete ditches.
4. Install low head, underground pipelines.
5. Install permanent sprinkler irrigation system.

Alternative 1: Would not correct the problem.

Alternative 2: Would cause severe dust/mud problems.

Alternative 3: Ditches are dangerous to young children.

Alternative 4: Too expensive.

Alternative 5: This was selected as most nearly fulfilling the objectives of the measure.

V. Recommended Plan: Alternative 5—No permits or licenses are required.

VI. Impacts of the Recommended Plan: The impacts are outlined in the measure plan. The environmental impacts are negligible.

VII. Consultation and Participation:

1. Mohawk Valley School.
2. Bureau of Reclamation.

3. Wellton-Mohawk Irrigation District.
(FR Doc. 83-23712 Filed 8-29-83; 8:45 am)
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with Subsections 301.5(a)(3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register**.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-275. Applicant: Case Western Reserve University, 10900 Euclid Avenue, Cleveland, OH 44106. Instrument: Electron Microscope, Model JEM 200CX. Manufacturer: JEOL, Japan. Intended use of instrument: The instrument is intended to be used in conducting studies involving the following:

- (1) Nature of the interface between matrix and coherent precipitates in partially-stabilized ZrO₂.
- (2) Ordered compounds in stabilized ZrO₂.
- (3) Diffusion couple interfaces.
- (4) Interface between oxide scales and Fe-based alloys.
- (5) Radiation damage in materials.
- (6) Titanium alloys.
- (7) Microstructures of thin films.
- (8) Microstructure of electrocatalysts.
- (9) Structure of stacked macrocycles.
- (10) High resolution electron microscopy of polymers and

(11) Glide dislocation-grain boundary interactions in body-centered cubic metals.

In addition, the instrument will be used to teach students the practical use, theory, and applications of electron microscopy to metallurgy and materials science, particularly the advanced applications of TEM, STEM, XEDS and EELS. Application Received by Commissioner of Customs: August 9, 1983.

Docket No. 83-276. Applicant: University of Wisconsin-Madison, Materials Science Center, 1115 Engineering Research Building, 1500 Johnson Drive, Madison, WI 53706. Instrument: Biaxial Tilting Stage for Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended use of Instrument: The instrument is an accessory to an existing electron microscope which will be used for electron microscopic studies of superconducting materials, radiation damage and catalysis. Application Received by Commissioner of Customs: August 9, 1983.

Docket No. 83-277. Applicant: Riverside Hospital, 500 J. Clyde Morris Boulevard, Newport News, VA 23601. Instrument: Electron Microscope, Model JEM-100CX and Accessories. Manufacturer: JEOL, Japan. Intended use of Instrument: The instrument is intended to be used for patient care, ultrastructural research studies as well as medical training. Application Received by Commissioner of Customs: August 9, 1983.

Docket No. 83-278. Applicant: Arizona State University, College of Engineering and Applied Sciences, Electrical Engineering, Tempe, AZ 85287. Instrument: Gammacell 220-Co-60 Irradiator. Manufacturer: Atomic Energy Commission Ltd., Canada. Intended use of Instrument: The instrument is intended to be used for the following:

(a) Electrical engineering research in the areas of radiation damage to electronics and radiation hardening of electronics.

(b) Mechanical engineering research in areas of radiation damage to materials.

(c) Agricultural research in food preservation.

The instrument will also be used in numerous graduate and undergraduate courses for research, experiments and demonstration. Application received by Commissioner of Customs: August 9, 1983.

Docket No. 83-279. Applicant: University of California, Davis, Department of Human Physiology, Davis, CA 95616. Instrument: Myograph with Electronic Box/Power Supply and

Accessories. Manufacturer: J. P. Trading, Denmark. Intended use of Instrument: The instrument is intended to be used to study the forces generated by extremely small blood vessels (microvessels) when they are stimulated. Experiments will be done on microvessels (those responsible for raising blood pressure) from hypertensive and normotensive animals to analyze differences in vascular contractility relating to hypertensive disease. The objectives will be to determine how early in the process of development of hypertension the blood vessel characteristics change (contractility is one of the characteristics being studied). In addition, the instrument will be used to give students in the course Human Physiology 299 experience in the latest techniques of measuring and evaluating blood vessel responses, particularly those of the smallest blood vessels which are responsible for the blood pressure changes in hypertension; a large number of microscopic techniques are used. Application received by Commissioner of Customs: August 9, 1983.

Docket No. 83-280. Applicant: University of Maryland, Department of Chemistry, Chemistry Building, College Park, MD 20742. Instrument: Mass Spectrometer, Model 7070E. Manufacturer: VG Instruments, United Kingdom. Intended use of Instrument: The instrument is intended to be used to carry out mass spectrographic studies on organic, inorganic and biological materials. Experiments will be conducted to determine the exact empirical formulae and fragmentation pattern of the compounds under study. These data will help to establish the structures of these materials. In addition, the instrument will be used for educational purposes in the courses CHEM 648—Spectral Methods, CHEM 799—Master's Research and CHEM 899—Ph.D. Research. Application Received by Commissioner of Customs: August 9, 1983.

Docket No. 83-281. Applicant: University of California, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: Excimer Pump Laser, Model EMG 102 and Dye Laser, Model FL 2001. Manufacturer: Lambda Physik, West Germany. Intended use of Instrument: The instrument is intended to be used for studies of excited state properties (photochemistry, luminescence, excited state absorption, Raman, and excited state Raman spectroscopy) of transition metal and organometallic compounds. The experiments will involve irradiating the above samples with laser light. In the Raman experiments, the scattered light will be detected, recorded and

interpreted. In the luminescence studies the light emitted by the samples after they have absorbed the laser light will be measured. In the photochemistry studies, the chemical products after absorption of the laser light will be studied. The instrument will also be used as a central tool in the research program of students in various chemistry courses. Application Received by Commissioner of Customs: August 9, 1983.

Docket No. 83-288. Applicant: USDA, PIADC, APHIS, National Veterinary Services Labs, 13th St. & Dayton Rd., Ames, IA 50010. Instrument: Electron Microscope, EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended use of Instrument: The instrument is intended to be used for the examination of animal tissue and cell culture inoculated with approximately 40 different foreign animal disease agents, including viruses, mycoplasma, bacteria, rickettsia and hemoparasites. The primary objective in the investigations will be the differential diagnosis of many viral, bacterial, mycoplasma and/or hemoparasitic animal diseases. Application Received by Commissioner of Customs: August 12, 1983.

Docket No. 83-289. Applicant: Virginia Polytechnic Institute and State University, Purchasing Department, Blacksburg, VA 24061. Instrument: Electron Microscope, EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of Instrument: The instrument is intended to be used to study biological materials (tissues, isolated organelles, particulates) of interest and pertinence to research in the College of Agriculture and Life Sciences. Application Received by Commissioner of Customs: August 12, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-23636 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications For Duty-Free Entry of Circular Dichroism Spectropolarimeters

The following is a consolidated decision on applications for duty-free entry of circular dichroism spectropolarimeters pursuant to Section 6(c) of Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15

CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-162. Applicant: University of Southern California, University Park, Los Angeles, CA 90089-0482. Instrument: Circular Dichroism Spectropolarimeters, Model #J500C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of instrument: See notice on page 16932 in the Federal Register of April 20, 1983. Advice submitted by: The National Institutes of Health: July 20, 1983.

Docket No. 83-201. Applicant: University of Wyoming, University Station, Laramie, WY 82071. Instrument: Spectropolarimeter, Model J-500A and Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended Use of Instrument: See notice on page 23878 in the Federal Register of May 27, 1983. Advice submitted by: The National Institutes of Health: July 20, 1983.

Comments: No comments have been received with respect to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for such purposes as these instruments are intended to be used, is being manufactured in the United States.

Reasons: Each foreign instrument to which the foregoing applications relate provides measurement of circular dichroism spectra and high frequency switching (50,000 times per second) between left and right-circularly polarized light. The National Institutes of Health advises in its respectively cited memoranda that (1) the capabilities of the foreign instruments described above are pertinent to the purposes for which each article is intended to be used and (2) they know of no domestic instrument or apparatus of equivalent scientific value to either of the foreign instruments for such purposes as these instruments are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to either of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-25837 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

[A-588-058]

Metal-Walled Above Ground Swimming Pools From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On May 24, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on metal-walled above ground swimming pools from Japan. The review covers the three known Japanese exporters and one known third-country reseller of this merchandise to the United States and various periods from November 1, 1977 through August 31, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final result of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Betty H. Laxague or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION

Background

On May 24, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 23291) the preliminary results of its administrative review of the antidumping finding on metal-walled above ground swimming pools from Japan (42 FR 44811, September 7, 1977). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of metal-walled above ground swimming pools. This merchandise is currently classifiable under items 657.2590 and 774.5595 of the Tariff

Schedules of the United States Annotated.

Metal-walled above ground swimming pools exported from third countries which contain walls, frames, and vinyl liners manufactured in Japan are within the scope of the finding.

The review covers the three known Japanese exporters and one known third-country (Canada) reseller of Japanese metal-walled above ground swimming pools to the United States. The review covers various periods from November 1, 1977 through August 31, 1982.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review remain unchanged from the preliminary results of review, and we determine that the following weighted-average margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|--------------------------------------------------------------------------|------------------|--------------------|
| Asahi Chemical Industry Co., Ltd. | 11/1/77-10/31/78 | 29.09 |
| | 11/1/78-10/31/79 | 26.87 |
| | 11/1/79-8/31/80 | 20.40 |
| | 9/1/80-8/31/82 | ¹ 20.40 |
| Seiwa Sangyo Co., Ltd. | 9/1/80-8/31/82 | ¹ 72.00 |
| | 9/1/80-8/31/82 | ¹ 72.00 |
| Hakuyo Sangyo Third-country reseller (country: Irwin Toy, Ltd. (Canada)) | 4/1/78-10/31/78 | 29.09 |
| | 11/1/78-10/31/79 | 26.87 |
| | 11/1/79-8/31/80 | 20.40 |
| | 9/1/80-8/31/82 | ¹ 20.40 |

¹ No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required on all shipments of Japanese metal-walled above ground swimming pools from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after August 31, 1982 and who is unrelated to any reviewed firm, a cash deposit of 20.40 percent shall be required. These deposit

requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to immediately begin the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 23, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-23940 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

[A-122-085]

Sugar and Syrups From Canada; Preliminary Results of Administrative Review of Antidumping Duty Order and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order and tentative determination to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on sugar and syrups from Canada. The review covers the seven known manufacturers and/or exporters of this merchandise to the United States and the period April 1, 1981 through March 31, 1982. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the period of review. The Department has also tentatively determined to revoke the order with respect to one of the seven firms, F. W. Jones and Son. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Amy Dale or Robert J. Marenick, Office

of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 25393-4) the final results of its last administrative review of the antidumping duty order on sugar and syrups from Canada (45 FR 24126-7, April 9, 1980) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers the seven known manufacturers and/or exporters of Canadian sugar and syrups to the United States and the period April 1, 1981 through March 31, 1982.

Three firms did not export Canadian sugar and syrups to the United States during the review period. The estimated antidumping duty cash deposit rates for these firms will be the most recent rate for each firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, delivered price to unrelated purchasers in the United States, with deductions, where applicable, for U.S. duty, brokerage, cash discounts, commissions to unrelated parties, and U.S. and Canadian inland freight. Where applicable, we added Canadian duties paid at the time of importation into Canada of the raw material used to produce the sugar and syrups because these duties were debated when the sugar and syrups were exported to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or

similar merchandise were sold in the home market to provide a basis for comparison. The foreign market value was based on the f.o.b. factory, packed price, with adjustments where applicable, for differences in packing costs, commissions to unrelated parties, and quantity discounts. We made a further adjustment where applicable, for differences in the physical characteristics of the merchandise in accordance with section 353.16 of the Commerce Regulations. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Margin |
|--------------------------------------------|--------|
| Atlantic Sugar, Ltd. (U.S. dollars per lb) | 0.0223 |
| B.C. Sugar (percent) | 0 |
| F.W. Jones and Son (percent) | 0.004 |
| Lentzco Ltd. | 17.33 |
| Redpath Sugar Ltd. (percent) | 0.2 |
| Scott Paper Co., Ltd. | 17.33 |
| St. Lawrence Sugar, Ltd. (percent) | 5.69 |

¹ No shipments during the period.

The Department has also concluded that all sales of Canadian sugar and syrups by F.W. Jones and Son to the United States were made at not less than fair value or had *de minimis* margins during the period April 1, 1980 through March 31, 1982. As provided for in section 353.54(e) of the Commerce Regulations, F.W. Jones and Son has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that Canadian sugar and syrups manufactured by F.W. Jones and Son, and thereafter imported into the United States are being sold by that firm at less than fair value.

Therefore, we tentatively determine to revoke the finding on sugar and syrups from Canada with respect to F.W. Jones and Son. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first work day thereafter. Any request for an

administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the time period. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

Further, as provided for by section 353.46(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Canadian sugar and syrups from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Since the margins for F. W. Jones and Son and Redpath Sugars Ltd. are less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for those firms. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after March 31, 1982 and who is unrelated to any reviewed firm, a cash deposit of 5.69 percent shall be required. These deposit requirements and waivers shall remain in effect until publication of the final results of the next administrative review.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and sections 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: August 22, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-33839 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Preliminary Determination of Sales at Not Less Than Fair Value: Certain Tapered Journal Roller Bearings and Parts Thereof From the Federal Republic of Germany

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at not less than fair value: certain tapered journal roller bearings and parts thereof from the Federal Republic of Germany.

SUMMARY: We have preliminarily determined that certain tapered journal roller bearings and parts thereof (TJRB) from the Federal Republic of Germany (FRG) are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We found no margins on exports of the subject merchandise during the period of investigation. If this investigation proceeds normally, we will make a final determination by November 7, 1983.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen or David Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1784 or 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is no reasonable basis to believe or suspect that TJRB from the FRG are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We found no margins for exports of TJRB to the United States.

If this investigation proceeds normally, we will make our final determination by November 7, 1983.

Case History

On January 26, 1983, we received a petition filed by counsel for Brenco, Inc. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that TJRB from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 15, 1983 (48 FR 7766). On March 8, 1983, we corrected the product description which appeared in the initiation notice (48 FR

10726). On March 14, 1983, the ITC found that there is a reasonable indication that imports of certain TJRB are materially injuring, or are threatening to materially injure, a United States industry.

A questionnaire was presented in the FRG to FAG Kugelfischer Georg Schafer & Co. (FAG), the only known producer of the subject merchandise, on February 16, 1983. The response was received on April 26, 1983. A supplemental questionnaire was sent to counsel for FAG on May 11, 1983. The supplemental response was received on June 1, 1983.

On June 10, 1983, counsel for the petitioner requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. We postponed our preliminary determination until not later than August 24, 1983 (48 FR 28681).

Scope of Investigation

For purposes of this investigation, the term "certain tapered journal roller bearings and parts thereof" covers two-row tapered journal roller bearings and parts thereof including cone and cup assemblies in sets, cone assemblies and cups sold separately, and other parts which may or may not be lubricated, sealed at the manufacturer's factory, and/or unitized. This investigation includes only those tapered journal roller bearings with assembled outside diameters between 6.5 and 10.875 inches, and meeting the specifications established by the Association of American Railroads in Specification M-934-81. Such tapered journal roller bearings and parts thereof are currently classified under items 680.3932, 680.3934, 680.3938, and 680.3940 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

We investigated sales of TJRB by FAG during the period from August 1, 1982, to January 31, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(c) of the Act, we used the exporter's sales price of the subject merchandise to represent the United States price for sales by FAG because the merchandise was sold to unrelated United States purchasers after importation into the United States.

We calculated the exporter's sales price based on the c.i.f., duty paid,

delivered, packed price. We made deductions for FRG inland freight, ocean freight, inland insurance, marine insurance, United States inland freight, customs duties, credit expenses, and brokerage. We will seek additional information on other selling expenses for our final determination.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on FAG's third country sales to unrelated customers of FAG Bearings Ltd. (FAG Canada) because such or similar merchandise was not sold in the home market. Our selection of Canada as the third country to be used for fair value comparisons was made because the TJRB exported to Canada had a greater degree of similarity to the TJRB exported to the United States than those exported to other third countries.

We calculated the third country prices on the basis of delivered, packed prices to unrelated purchasers in Canada. From these prices we deducted FRG inland freight and inland insurance, and Canadian inland freight, brokerage, credit expenses, import duties, ocean freight, marine insurance, and inland insurance.

No adjustments were made for packing costs because these costs were claimed to be the same in both markets. We will seek additional information on other selling expenses for our final determination.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this

preliminary determination at 10:00 a.m. on September 28, 1983, at the United States Department of Commerce, Room 3092, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 21, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address and in at least 10 copies.

Dated: August 24, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-23823 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Preliminary Determination of Sales at Less Than Fair Value: Certain Tapered Journal Roller Bearings and Parts Thereof From Italy

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Tapered Journal Roller Bearings and Parts Thereof from Italy.

SUMMARY: We have preliminarily determined that certain tapered journal roller bearings and parts thereof (TJRB) from Italy are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 7, 1983.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen or David Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1784 or 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain tapered journal roller bearings and parts thereof (TJRB) from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

We have found that the foreign market value of TJRB exceeded the United States price on all sales compared. These margins ranged from 4.8 percent to 12.7 percent. The overall weighted-average margin on all sales compared is 12.2 percent.

If this investigation proceeds normally, we will make our final determination by November 7, 1983.

Case History

On January 28, 1983, we received a petition filed by counsel for Brenco, Inc. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that TJRB from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 15, 1983 [48 FR 7767]. On March 8, 1983, we corrected the product description which appeared in the initiation notice [48 FR 10726]. On March 14, 1983, the ITC found that there is a reasonable indication that imports of certain TJRB are materially injuring, or are threatening to materially injure, a United States industry.

A questionnaire was presented in Italy to RIV-SKF Industrie S.P.A. (RIV-SKF), the only known producer of the subject merchandise, on February 16, 1983. The response was received on April 15, 1983. A supplemental questionnaire was sent to counsel for RIV-SKF on May 10, 1983. The

supplemental response was received on May 26, 1983 and further information was received on July 20, 1983.

On June 10, 1983, counsel for the petitioner requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. We postponed our preliminary determination until not later than August 24, 1983 (48 FR 28681).

Scope of Investigation

For purposes of this investigation, the term "certain tapered journal roller bearings and parts thereof" covers two-row tapered journal roller bearings and parts thereof including cone and cup assemblies in sets, cone assemblies and cups sold separately, and other parts which may or may not be lubricated, sealed at the manufacturer's factory, and/or unitized. This investigation includes only those tapered journal roller bearings with assembled outside diameters between 6.5 and 10.875 inches, and meeting the specifications established by the Association of American Railroads in Specification M-934-81. Such tapered journal roller bearings and parts thereof are currently classified under items 680.3932, 680.3934, 680.3936, and 680.3940 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

We investigated sales of TJRB by RIV-SKF during the period from August 1, 1982, to January 31, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by RIV-SKF because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b., Italian port, packed price. We made deductions for foreign inland freight. For the final determination, we will seek information as to whether there are any United States selling expenses.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market

value based on RIV-SKF's third country sales to unrelated customers of SKF Canada Ltd., since such or similar merchandise was not sold in the home market. Our selection of Canada as the third country to be used for fair value comparisons was made because the TJRB exported to Canada had a greater degree of similarity to the TJRB exported to the United States than those exported to other third countries.

We calculated the third country prices on the basis of delivered, packed prices to unrelated purchasers in Canada, in accordance with section 773(a)(3) of the Act. From these prices we deducted Italian inland freight, ocean freight, marine insurance, and Canadian commissions, import duties, inland freight, and sales tax. We also deducted Canadian packing cost and added the packing cost incurred on sales to the United States. No adjustments were made for export duties rebated and credit expenses because these costs were claimed to be the same in both markets. While terms of credit extended by SKF Canada Ltd. were claimed to be the same, actual repayment schedules will be sought by the Department to determine actual credit expenses. If there are United States selling expenses, we will make appropriate deductions in accordance with § 353.15(c) of the Commerce Regulations.

The following claims were disallowed in calculating foreign market value. SKF Canada Ltd. requested circumstances of sale adjustments for the salary and travel expenses of a product manager, a salesman and a serviceman, as well as warehousing expenses. We did not make these adjustments because the company did not provide sufficient documentation to show a direct relationship between these expenses and the sales under investigation as required by section 353.15 of the Commerce Regulations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of TJRB from Italy which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until

further notice. The weighted-average margin is 12.2 percent.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on September 28, 1983, at the United States Department of Commerce, Conference Room D, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 21, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address and in at least 10 copies.

Dated: August 24, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-23824 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

Antidumping; Preliminary Determination of Sales at Less Than Fair Value: Certain Tapered Journal Roller Bearings and Parts Thereof From Japan

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Tapered Journal Roller Bearings and Parts Thereof from Japan.

SUMMARY: We have preliminarily determined that certain tapered journal roller bearings and parts thereof (TJR) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 7, 1983.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1784.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain tapered journal roller bearings and parts thereof (TJR) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

We have found that the foreign market value of TJR exceeded the United States price on 99 percent of the sales. These margins ranged from .06 percent to 26.1 percent. The overall weighted-average margin on all sales compared is 4.3 percent.

If this investigation proceeds normally, we will make our final determination by November 7, 1983.

Case History

On January 26, 1983, we received a petition filed by counsel for Brenco, Inc. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that TJR from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 15, 1983 (48 FR 7767). On March 8, 1983, we corrected the product description which appeared in the initiation notice (48 FR 10726). On March 14, 1983, the ITC found that there is a reasonable indication that imports of certain TJR are materially injuring, or are threatening to materially injure, a United States industry.

A questionnaire was presented in Japan to Koyo Seiko Co., Ltd. (Koyo), the only known producer of the subject merchandise, on February 16, 1983. The response was received on April 4, 1983. Supplemental questionnaires were sent to counsel for Koyo on April 21 and July 14, 1983. The responses were received on May 20 and August 1, 1983.

On June 8, 1983, we advised counsel for the petitioner that the case was extraordinarily complicated and that the Department was extending the period for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(B) of the Act. We postponed our preliminary determination until not later than August 24, 1983 (48 FR 28520).

Scope of Investigation

For purposes of this investigation, the term "certain tapered journal roller bearings and parts thereof" covers two-row tapered roller bearings and parts thereof including cone and cup assemblies in sets, cone assemblies and cups sold separately, and other parts which may or may not be lubricated, sealed at the manufacturer's factory, and/or unitized. This investigation includes only those tapered journal roller bearings with assembled outside diameters between 6.5 and 10.875 inches, and meeting the specifications established by the Association of American Railroads in Specification M-934-81. Such tapered journal roller bearings and parts thereof are currently

classified under items 680.3932, 680.3834, 680.3938, and 680.3940 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

We investigated sales of TJR by Koyo during the period from August 1, 1982, to January 31, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(c) of the Act, we used the exporter's sales price of the subject merchandise to represent the United States price for sales by Koyo, because the merchandise was sold to unrelated purchasers after importation into the United States.

We calculated the exporter's sales price based on the c.i.f., duty paid, delivered packed price. We made deductions for Japanese inland freight, ocean freight, marine insurance, United States inland freight, customs duties, brokerage, warehousing, commissions, credit, and other selling expenses incurred in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on Koyo's third country sales to unrelated customers of Australian Koyo Ltd. because such or similar merchandise was not sold in the home market. Our selection of Australia as the third country to be used for fair value comparisons was made because the TJR exported to Australia had a greater degree of similarity to the TJR exported to the United States than those exported to other third countries.

We calculated the third country prices on the basis of delivered, packed prices to unrelated purchasers in Australia. From these prices we deducted Japanese inland freight, insurance, brokerage, ocean freight, marine insurance, and Australian brokerage, import duty, inland freight and insurance. We also made a deduction for selling expenses to offset United States selling expenses in accordance with § 353.15(c) of the Commerce Regulations.

We made deductions, where appropriate, for differences in credit expenses and technical services. No adjustment for packing was made because packing costs were claimed to be the same in both markets.

The following claims were disallowed in calculating foreign market value because they did not meet the

requirements of § 353.15 of the Commerce Regulations. Koyo requested a circumstance of sale adjustment for consulting fees and entertainment. We did not make a circumstance of sale adjustment for these claims because the information submitted was not sufficient to indicate a direct relationship to the sales under investigation. We did consider entertainment to be an indirect selling expense and included the amount in the offset to United States selling expenses as required by § 353.15(c) of the Commerce Regulations. We also disallowed Koyo's claim for interest expense incurred on sales by Koyo to Australian Koyo Ltd. because the firms are related and the intra-company transfer of funds in the form of interest expense is not a corporate expense.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of TJRB from Japan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin is 4.3 percent.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with section 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this

preliminary determination at 10:00 a.m. on September 29, 1983, at the United States Department of Commerce, Conference Room D, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 22, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address and in at least 10 copies.

Dated: August 24, 1983.

Alan F. Holmer,
Deputy Assistant Secretary for Import
Administration.

[FR Doc. 83-22985 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determination; Forged Undercarriage Components From Italy

AGENCY: International Trade Commission, United States Department of Commerce.

ACTION: Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Italy of forged undercarriage components, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 1.02 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the merchandise subject to this investigation which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on this merchandise in an amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination by October 26, 1983.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT:

Roland MacDonald or Deborah Semb, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-5496 or 377-3534.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that the government of Italy provides certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), to manufacturers, producers, or exporters in Italy of forged undercarriage components, as described in the "Scope of Investigation" section of this notice. We estimate the net subsidy to be 1.02 percent *ad valorem*.

Case History

On April 29, 1983, we received a petition from counsel for Jernberg Forgings Co., Lindell Drop Forge Co., Protec, Inc., Presrite Corp., Presrite of Jefferson, Inc., Walco Metal Forming Group, and Walker Forge, Inc. filed on behalf of the U.S. industry producing forged undercarriage components. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to manufacturers, producers, or exporters in Italy of forged undercarriage components. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on May 24, 1983, we initiated an investigation (48 FR 23288). We stated that we expected to issue a preliminary determination by July 25, 1983. We subsequently determined that the case is "extraordinarily complicated" as defined in section 703(c)(1)(B) of the Act, and postponed our preliminary determination until August 25, 1983 (48 FR 28564).

Since Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the International Trade Commission (ITC) of our initiation. On June 13, 1983, the ITC determined that there is a reasonable indication that imports of semifinished forged undercarriage links and rollers are materially injuring U.S. industries. The ITC also determined that there is no reasonable indication that semifinished forged undercarriage segments and finished forged undercarriage links, rollers and

segments are materially injuring U.S. industries. Since Industria Meccanica e Stampaggio S.p.A. is the only known exporter to the U.S. of semifinished forged undercarriage links and rollers, our investigation of the petition's allegations regarding Italtractor ITM S.p.A. and Berco S.p.A., the manufacturers, producers and exporters of semifinished forged undercarriage segments and finished forged undercarriage links, rollers and segments, was terminated.

We presented a questionnaire concerning the allegations to the Embassy of Italy in Washington, D.C. on June 14, 1983 and requested a response by July 14, 1983. In a letter dated July 11, 1983, the government of Italy requested a postponement of the due date of the response; we granted the Italian government a two-week extension.

The government of Italy submitted a response to our questionnaire on July 28, 1983.

Scope of Investigation

The products covered by this investigation are semifinished forged undercarriage links and rollers for crawler-mounted machinery (forged undercarriage components). The merchandise is currently classified under item numbers 664.08, 692.34 and 692.35 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

Industria Meccanica e Stampaggio S.p.A. (IMES) of Sumirago (Varese), Italy is the only known exporter of the forged undercarriage components which were exported to the United States. The period for which we are measuring subsidization is January 1, 1982 through April 30, 1983.

Analysis of Programs

In its response, the government of Italy provided data for the applicable period. In addition, a response was provided by IMES through the government of Italy. Based upon our analysis to date of the petition and the responses to our questionnaire, we have preliminarily determined the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Italy of forged undercarriage components under the programs described below.

A. Rebates of Indirect Taxes

The stated purpose of Italian Law 639 is to rebate customs duties and certain indirect taxes upon the export of products containing iron and steel. The

law sets forth the value of the rebate which is expressed in lire per kilogram. Rebate values have remained unchanged since enactment of the law in 1964. Granting of the rebate is automatic provided all the proper information is supplied to and verified by the government of Italy.

Respondents did not provide the Department with information on the criteria for establishing the rebate value and on the indirect taxes which were subject to rebate. No evidence was presented by the respondents to demonstrate the requisite linkage between the amount of the rebate and the incidence of customs duties and certain indirect taxes on various inputs of forged undercarriage components.

Since the requisite linkage was not demonstrated and since this rebate is contingent upon export performance and operates to stimulate export sales over domestic sales, we preliminarily determine that the rebate of indirect taxes provided to IMES under Italian Law 639 confers an export subsidy upon the manufacturers, producers, or exporters in Italy of forged undercarriage components.

We calculated the benefit received under this program by allocating the value of the rebates received between January 1, 1982 and April 30, 1983 over the value of its 1982 and January-April 1983 exports of forged undercarriage components. On this basis, we calculated a net subsidy in the amount of 0.99 percent *ad valorem*.

B. Preferential Financing

Italian Law 623 provided for government loans at preferential rates to small and medium-sized companies which are located in designated "depressed areas." These below market rate loans were granted for the construction of new industrial plants or the renewal, redesign or expansion of existing industrial plants.

In 1974, IMES obtained an 8 year loan from Mediocredito Regionale Lombardo at the commercial market rate of interest. In February 1976, IMES received a reduction in the interest rate of the loan under law 623.

Because these loans are limited to companies which are located in specified regions and because the terms of these loans are inconsistent with commercial considerations, we preliminarily determine that the financing provided under law 623 confers a domestic subsidy upon the manufacturers, producers or exporters in Italy of forged undercarriage components.

We used the quarterly financial statistics published by the Organization

for Economic Cooperation and Development (OECD) to determine the benchmark for the commercial lire rate of interest for the first quarter of 1976. We used the Department's standard methodology for calculating the benefit arising from a preferential loan. As this program conferred a domestic subsidy, we allocated the benefit over IMES' total 1982 sales. On this basis we calculated a subsidy in the amount of 0.03 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Confer Subsidies

We preliminarily determined that the Italian government is not providing subsidies to manufacturers, producers or exporters of forged undercarriage components included in this investigation under the following programs:

A. Pricing on Forging Quality Steel Purchased

According to its response, IMES has no relationship with any of the steel suppliers from which it purchased steel. Two of IMES's suppliers were private Italian enterprises, two were government-owned Italian enterprises and one was a company located in the United Kingdom. IMES attempted to purchase forging quality steel from a company in the Federal Republic of Germany but the transaction was never completed because IMES rejected the steel due to its quality.

IMES purchased nearly twice as much steel from private suppliers in 1982 as it did from publicly owned suppliers. The weighted average price of steel purchased from private suppliers was lower than the weighted average price of steel purchased from publicly owned suppliers. Thus, IMES did not benefit from preferential prices on steel purchased from government-owned steel suppliers.

Moreover, IMES stated in its response that all its purchases of steel were at arm's length. Further, IMES stated that it received no discounts on steel prices contingent upon export of forged undercarriage components.

Because IMES has purchased all its steel in arm's length transactions and received no discounts contingent upon export performance, we preliminarily determine that it did not receive a countervailable benefit through its steel purchases.

B. Convertible Debt

IMES issued convertible debt in 1977. This debt was converted to capital stock in November, 1982. According to its response, IMES is 100 percent privately

owned and there was no government participation in the debt conversion. Therefore, we preliminarily determine that conversion of IMES' debt to capital stock did not confer a countervailable benefit.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the programs listed below which were listed in the notice of "Initiation of Countervailing Duty Investigation—Forged Undercarriage Components from Italy" (48 FR 23288) are not being used by the manufacturers, producers or exporters in Italy of forged undercarriage components.

A. Government Equity Infusions Inconsistent with Commercial Considerations

According to its response, IMES is a 100 percent privately owned, family operated company which has not received any government equity infusions.

B. Regional Development Incentives

The petition alleges that IMES receives regional development benefits provided by the government of Italy under the following laws or programs: Law 908 which provides subsidized loans at below market rates and on preferential terms to qualifying industrial projects in northern and central Italy; Law 614 which provides tax incentives, including a ten-year total exemption from local taxes, to certain industrial enterprises establishing or expanding in areas of northern and central Italy; and Law 902 which assists small and medium-sized businesses in northern and central Italy with selective investments, particularly for modernizing existing plants to save labor costs.

According to its response, IMES has neither received any benefits from, nor participated in, any of these regional development programs.

IV. Program for Which Additional Information Is Needed

We will seek additional information on the following program before reaching our final determination in this investigation.

A. Export Credit Financing

Part IV of Italian Law 227 establishes medium-term credit financing to promote the exportation of goods and services. The Istituto Centrale per il Credito a Medio Termine (Mediocredito Centrale) administers the export credit financing through "special medium and long-term credit institutions." The

Minister of the Treasury, after consulting the Interministerial Committee for Credit and Savings, establishes the requirements, terms and conditions of the export credit financing. The financing is denominated in Italian lire or in any foreign currency acceptable to the Mediocredito Centrale and the special medium and long-term credit institutions.

In November and December 1982, medium-term export credit financing, denominated in U.S. dollars, at preferential rates was provided under this program for the export of the forged undercarriage components manufactured by IMES.

In its response, the government of Italy stated: "It is the opinion of the Italian government (according to Paragraph K of the Illustrative List of Export Subsidies annexed to the agreement on the interpretation of articles 6 and 16 of the General Agreement on Tariff and Trade) that export financing programs cannot be considered as countervailable subsidies when provided at the terms and conditions of the OECD 'consensus'."

Since the export credit financing may have provided loans for export related purposes at interest rates significantly less than those for comparable commercially available loans, the export credit financing provided under Part IV of Italian Law 227 may have conferred a subsidy upon the company under investigation. Item K of the Illustrative List is not necessarily dispositive of the countervailability of particular export credit financing. However, the Department needs more complete information on the terms and conditions of this loan before it can determine whether the loan confers a countervailable subsidy. The Department will seek that information before the final determination in this case.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of forged undercarriage components from Italy which are entered, or withdrawn from warehouse, for consumption, on or before the date of publication of the notice in the Federal Register, and to require a cash deposit or the posting of a bond for each entry of the merchandise in the amount of 1.02 percent *ad valorem*.

This suspension shall remain in effect until further notice.

ITC Notification

In accordance with section 703(d)(3) and (f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on September 27, 1983, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 20, 1983. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: August 24, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-23625 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Antidumping Investigations; Spindle Belting or Belts From the Federal Republic of Germany, Switzerland, Italy and Japan

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Investigations.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping investigations to determine whether certain spindle belting or belts from the Federal Republic of Germany, Switzerland, Italy, and Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigations proceed normally, the ITC will make its preliminary determinations on or before September 19, 1983 and we will make ours on or before January 11, 1984.

EFFECTIVE DATE: August 30, 1983.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION: On August 4, 1983, we received a petition in proper form from Barber Manufacturing Company of Charlotte, North Carolina, the only known producer of spindle belting or belts in the United States. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the Federal Republic of Germany (FRG), Switzerland, Italy, and Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673)(the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry. In evaluating the sufficiency of the petition concerning foreign sales or costs, the Department took into consideration that this company is a small business and was extremely constrained in its ability to furnish information concerning adjustments for differences between U.S. producer's costs and that of the foreign companies. The allegations of sales at less than fair value of the merchandise under investigation from the FRG, Switzerland, and Italy, are supported by comparisons of offered United States prices with the foreign market value based on the U.S. producer's cost for the merchandise adjusted, where appropriate, for cost

differences in the foreign country in question. For Japan, foreign market value was based on a home market price list for spindle belting.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition filed by the sole domestic manufacturer of spindle belting or belts, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping investigations to determine whether spindle belting or belts from the FRG, Switzerland, Italy, and Japan are being, or are likely to be, sold at less than fair value in the United States. If our investigations proceed normally, we will make our preliminary determinations by January 11, 1984.

Scope of Investigations

The merchandise covered by these investigations is spindle belting or belts made of man-made fibers, or of such fibers and rubber or plastics, all the foregoing designed for use on spindles, either coated, filled, or laminated with rubber or plastics. Spindle belting or belts is currently classified in items 358.14 and 358.16 of the *Tariff Schedules of the United States*.

Notification to the ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine within 45 days of the date the petition was received whether there is a reasonable indication that imports of spindle belting or belts from the FRG, Switzerland, Italy, and Japan are materially injuring, or are likely to materially injure, a United States industry. If its determinations are negative on any of the countries, that investigation will terminate; otherwise

these investigations will proceed according to the statutory procedures.

Dated: August 24, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-23835 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration**Environmental Assessment for the Voluntary Program To Conserve Sea Turtles by Using the Trawling Efficiency Device in Shrimp Trawls**

AGENCY: National Marine Fisheries Service (NMFS).

ACTION: Notice of Availability.

SUMMARY: The program to encourage voluntary use of the Trawling Efficiency Device (TED) to conserve sea turtles consists of several complimentary actions by NMFS, the National Oceanic and Atmospheric Administration's Sea Grant Advisory Service, shrimp industry representatives, individual shrimpers and environmentalists. Shrimp trawls equipped with a TED catch about 97 percent fewer turtles than shrimp trawls without a TED. NMFS proposes to promote the voluntary use of the TED by the commercial shrimp fishery in the southeast United States to reduce the incidental take of sea turtles in that fishery. Additional benefits of using the TED include: increasing the catch of shrimp up to 7 percent; reducing unwanted by-catch by about 50 percent; and reducing trawl drag, which may result in fuel savings. NMFS has determined that there will be no significant environmental impact from the proposed voluntary program. Copies of the Environmental Assessment and additional information concerning the voluntary program may be obtained by writing to the offices given below.

ADDRESSES: Charles A. Oravetz, National Marine Fisheries Service, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, Florida 33702, telephone 813/893-3366 or Charles Karnella, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, telephone 202/634-7471.

SUPPLEMENTARY INFORMATION: All species of sea turtles that occur in U.S. waters are listed either as endangered or threatened species pursuant to Section 4 of the Endangered Species Act of 1973, as amended (see 50 CFR

222.23(a) and 227.4). Section 7(a)(1) requires all Federal agencies to utilize their authorities to carry out programs for the conservation of endangered and threatened species. To partially fulfill this requirement NMFS initiated a program to develop gear that would reduce the incidental take of sea turtles in shrimp trawls without reducing the catch of shrimp. (NMFS estimates that each year about 45,000 sea turtles are taken incidentally in shrimp trawls, of these about 12,600 die.) The TED has proven to be the most effective method developed to reduce the number of turtles taken incidentally in shrimp trawls. The shrimp industry, the environmental community and Sea Grant all have cooperated with and assisted NMFS in developing the voluntary program, testing TEDS and in the technology transfer necessary to implement the program.

Dated: August 19, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-23696 Filed 8-29-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Long Endurance Aircraft, Advisory Committee Meeting

The Defense Science Board Task Force on Long Endurance Aircraft will meet in closed session on 19 September 1983 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 19 September 1983, the Task Force will consider the mission potential for long endurance aircraft.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: August 25, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 83-23810 Filed 8-29-83; 6:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Supercomputer Applications; Advisory Committee Meeting

The Defense Science Board Task Force on Supercomputer Applications will meet in closed session on 22-23 September 1983 in the Carnegie-Mellon University, Pittsburgh, Pennsylvania.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 22-23 September 1983, the Task Force will conduct a review of the Defense Department's program to apply emerging capacity of computers to contribute to military programs and issues. It will attempt to identify areas where the expected many orders of magnitude improvement in computing power can be of aid to the defense establishment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: August 25, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 83-23811 Filed 8-29-83; 6:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Levisa Fork Flood Damage Reduction Plan in Kentucky and Virginia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare A Draft Environmental Impact Statement.

1. The Levisa Fork formulation studies are being conducted in response to authorization of Section 202 of the Energy and Water Development

Appropriation Act of 1981 (Pub. L. 96-387). Study objectives are to determine the best means of affording portions of the Levisa Fork basin flood damage reduction measures.

2. The alternatives to be considered include that of no action, construction of flood control reservoirs, stream modification by channelization, construction of selected floodwalls and/or levees, floodproofing, and relocation of flood-prone development into flood-safe areas.

3. Public activities will deal with the overall flood damage reduction plan. Potential alternatives will be discussed with the elected officials of the study area and will be presented to civic groups, private organizations, and interested individuals as detailed studies progress.

a. Formal meetings will be scheduled to provide for discussion and input to evaluation of alternative plans and plan selection.

b. Significant issues to be analyzed in depth in the DEIS will be the impact of flooding on the existing environment and the effects of alternative plans. The plans may include a reservoir, floodwalls/levees, channel modifications, flood-proofing and/or relocations to new housing and community development sites.

c. Consultation shall be conducted with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. 661 et seq. (Pub. L. 85-624) and the Endangered Species Act 16 U.S.C. 1531 et seq. (Pub. L. 93-205) and the Heritage Conservation and Recreation Service and State Historical Preservation Officer(s) pursuant to the National Historical Preservation Act of 1966 (80 Stat 915) (Pub. L. 89-655), the Preservation of Historical and Archeological Data (88 Stat 174) (Pub. L. 93-291), and EO 11593.

4. A formal scoping meeting will not be held due to the legislative nature of the DEIS pursuant to paragraph 1506.8b(1) of 43 FR 55978-56007 of 29 November 1978. However, comments from interested members of the public and private and public agencies and organizations are invited.

5. It is anticipated that the DEIS will be available for public review in December 1984.

6. Questions concerning the proposed action and DEIS can be answered by:

Mr. Jim Twohig (Study Manager)

Mr. John Wright (Environmentalist),

Huntington District, Corps of Engineers, 502 Eighth Street, Huntington, West Virginia 25701.

Dated: August 11, 1983.

John W. Devens,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 83-23780 filed 8-29-83; 8:45 am]

BILLING CODE 3710-92-M

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan, Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Public hearing record; extension of comment period.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission has extended the comment period from August 31, 1983 to September 23, 1983 for submission of written testimony on proposed amendments to the Commission's Comprehensive Plan to revise and update descriptions of the Francis E. Walter, Prompton, Cannonsville and Tocks Island reservoir projects.

These proposed amendments are based upon recommendations in the Commission's final Level B Study and a recent agreement by the Governors of the Commonwealth of Pennsylvania, the State of New York, New Jersey and Delaware, and the Mayor of New York City entitled *Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20*.

The proposed amendments provide revised and updated descriptions of the purposes of the projects, applicable project modifications and schedules.

DATES: Public hearing were held as noticed in the July 8, 1983 *Federal Register*, Vol. 48, No. 132, page 31451 on August 3, 1983 in Wilkes Barre, Pennsylvania; August 4, 1983 in Honesdale, Pennsylvania; August 9, 1983 in Walton, New York; and August 11, 1983 in West Trenton, New Jersey.

Written testimony submitted to the Secretary by September 23, 1983 will be included in the hearing record.

ADDRESS: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission

Secretary, Delaware River Basin Commission, Telephone (609) 883-9500.

Susan M. Weisman,
Secretary.

August 23, 1983.

[FR Doc. 83-23714 Filed 8-29-83; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act.

DATES: Interested persons are invited to submit comments on or before September 24, 1983.

ADDRESSES: Written comments or requests should be addressed to Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, N.W., Room 3208 New Executive Office Building, Washington, D.C. 20503 and/or Margaret Webster, Department of Education, 400 Maryland Avenue, S.W., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: William Wooten, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The requirement for public consultation may be amended or waived by OMB to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform the statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the Office of Management and Budget. Public comment is invited and copies of the requests may be obtained from the addresses named above.

Dated: August 23, 1983.

Charles L. Heatherly,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education (OESE)

Extension

Application and Recordkeeping for School Assistance in Federally Affected Areas

ED 4019

Annually; Recordkeeping State or Local Governments

Reporting Burden: Responses: 3,053; Burden Hours: 25,600

Recordkeeping Burden: Recordkeepers: 3,000; Burden Hours: 27,600

Abstract: This is an application for local educational agencies requesting Federal funds to provide free public education for children with a parent residing or employed (or both) on Federal property.

Annual Survey of Children in Institutions for Neglected or Delinquent Children or in Adult Correctional Institutions

ED 4376

Annually

State or Local Governments

Reporting Burden: Responses: 52; Burden Hours: 2,000

Abstract: An annual survey is conducted to collect statutory formula data on (1) the Average Daily Attendance of children in State operated or supported institutions for neglected or delinquent children and (2) the October caseload data of children in local institutions. Affected public are State agencies and public or private institutions.

Revision

Special Condition Application for Federal Student Aid

ED 255-2

Annually

Individuals or Households

Reporting Burden: Responses: 236,000; Burden Hours: 259,600

Abstract: This form is used to collect the data necessary, when a student's family financial situation changes to determine whether the student is eligible for Federal student aid funds, and to calculate a uniform methodology number which financial aid administrators may use to award all other types of financial aid.

Application for Federal Student Aid—Pell Grant Program

ED 255

Annually

Individuals or Households

Reporting Burden: Responses: 5,300,000;
Burden Hours: 5,830,000

Abstract: This form is used to collect the data necessary to determine whether the student is eligible for Federal student aid funds, and to calculate a uniform methodology number which financial aid administrators may use to award all other types of financial aid.

Extension

Application for State Student Incentive Grant Program

ED 1288

Annually

State or Local Governments

Reporting Burden: Responses: 57; Burden Hours: 171

Abstract: Completed application shows States qualification for Federal funds, specifying matching and maintenance of effort capability, methods of determining student financial need, and the extent of institutional eligibility. With its signed assurances, the document commits the State to administer the Federal funds and State matching in compliance with the statute.

Lender's Request for Interest and Special Allowance—GSL and PLUS Programs

ED 799

Quarterly/Semi-Annually/Biennially

Businesses or Other for Profit; Small

Businesses or Organizations

Reporting Burden: Responses: 48,000;

Burden Hours: 48,000

Abstract: This form is used by lenders to request payment of interest and special allowance. This is the only reporting form to permit the Department to determine the government's obligation to lenders in the GSL and PLUS programs.

Application for Federal Insured Student Loan Program

ED 1154

Annually

Individuals or Households; Non-Profit Institutions

Reporting Burden: Responses: 240,000;

Burden Hours: 33,360

Abstract: The Department will use the data to verify the identity of the applicant; to determine program eligibility and benefits and to collect on delinquent or defaulted loans. Data will be given, upon request, to Federal, State, or local agencies, education institutions and credit and collection agencies. Respondents include eligible student borrowers, lenders, and institutions.

Office of Educational Research and Improvement (OERI)

New

High School and Beyond Second Follow-Up Survey

ED 2441-1 & 2441-2

On Occasion

Individuals or Households

Reporting Burden: Responses: 26,500;

Burden Hours: 26,500

Abstract: NCES instituted the National Longitudinal Studies (NLS) program in order to establish a nationally representative sample of high school students. One major component of the NLS is the High School and Beyond (HS&B) study. HS&B is a sample of 1980 high school sophomores and seniors. HS&B data is used to study educational, vocational, and personal development of high school students.

The Use of ERIC Resources by Information Service Provider

NIE 241

Non-Recurring

Businesses or Other for Profit

Institutions; Non-Profit Institutions;

Small Businesses or Organizations

Reporting Burden: Responses: 800;

Burden Hours: 600

Abstract: This project is a study of the NIE funded ERIC program and the use of ERIC and other information resources by information service providers. The findings will inform program managers and policy makers about ERIC and information dissemination by indicating how information service providers select, organize, and use information resources. Respondents—libraries and other information providers.

Fast Response Survey System

ED 2379

Non-Recurring

State or Local Governments

Reporting Burden: Responses: 1,200;

Burden Hours: 600

Abstract: Surveys are conducted through ED's Fast Response Survey System in order to answer requests for urgently needed policy information. The first survey, directed to State Directors of Adult and Vocational Education, asks for their recommendations for initiatives to improve adult and vocational education. This information will be used in guiding ED priorities. The second survey is a sample survey of schools, colleges, and Departments of Education concerning the availability of computers for student use, required courses in computer literacy or computer assisted instruction, and current needs and future plans. This information will be used to identify

the current status and needs in this area and determine the need for any ED initiatives. The third survey is a sample survey of public libraries concerning current and planned availability of computer hardware and software services to library patrons. This information will be used to determine the relation of the use of computer technology in libraries to ED initiatives.

A Study of State School Improvement Programs

ED 918

Non-Recurring

State or Local Governments

Reporting Burden: Responses: 2,800;

Burden Hours: 280

Abstract: A study of how State education agencies formulate and implement programs to improve local school quality. Data collection will consist of interview with state officials in six to eight states, plus local district and school level respondents.

A study of the Selection of Public Elementary and Secondary School Teachers

ED 919

Non-Recurring

State or Local Governments; Non-Profit Institutions

Reporting Burden: Responses: 2,100;

Burden Hours: 210

Abstract: A study to determine how local school districts select teachers, requiring collection of information from local administrators and teachers in six to nine districts plus some data collection at the State level.

A Study of the Minnesota Income Tax Deduction for Public and Private School Expenses.

ED 920

Non-Recurring

Individuals or Households/Non-Profit Institutions

Reporting Burden: Responses: 1,700;

Burden Hours: 1,550

Abstract: A study of the history, operation, and effects of the Minnesota income tax deduction for public and private school expenses, recently upheld by Supreme Court. Data collection will consist of a survey of public and non-public school households and a survey administered to heads of private schools.

Office of Bilingual Education and Minority Languages Affairs

Existing Collection—Unapproved

Information Service Reaction Form

ED 927

On Occasion

Individuals or Households; State or Local Governments; Businesses or Other For Profit; Federal Agencies or Employees; Non-Profit Institutions; Small Businesses or Organizations

Reporting Burden: Responses: 3,000; Burden Hours: 250

Abstract: Form is sent to persons who have requested information from the National Clearinghouse for Bilingual Education. The respondents are asked to indicate the usefulness of information provided in response to their requests and to suggest ways in which the clearinghouse may improve its information sources and services. Completion of the form is voluntary.

Recordkeeping Under Bilingual Education

Recordkeeping

State or Local Governments; Non-Profit Institutions

Recordkeeping Burden: Recordkeepers: 16; Burden Hours: 4,680

Abstract: Grantees are required to maintain records showing the time and funds expended on the project, the project accomplishments, and evidence of program compliance.

Recordkeeping Under the Bilingual Education Fellowship Program

Recordkeeping

Non-Profit Institutions

Recordkeeping Burden: Recordkeepers: 33; Burden Hours: 990

Abstract: Participating institutions must keep records of the amount of each fellowship award expended each year. The Department uses this information to determine students' obligations in the event that they do not meet the legal post-fellowship service requirement and must repay the fellowship award.

Recordkeeping Under Bilingual Education

Recordkeeping

State or Local Governments; Non-Profit Institutions

Recordkeeping Burden: Recordkeepers: 875; Burden Hours: 31,250

Abstract: Grantees are required to maintain records showing the time and funds expended on the project, the project accomplishments, and evidence of program compliance.

Revision

Application for Participation in Bilingual Education Fellowship Program

ED 4561-2

Annually

Non-Profit Institutions

Reporting Burden: Responses: 303; Burden Hours: 1,040

Abstract: Form is used by institutions of higher education to request approval

of their graduate programs of study so that they may nominate students for fellowship awards. The student nomination form becomes part of the award document and is used by institutions to report annually on the amount of funds spent per fellowship.

Reinstatement

Application for Grants Under Bilingual Education

ED 4561

Annually

State of Local Governments; Non-Profit Institutions

Reporting Burden: Responses: 750; Burden Hours: 60,000

Abstract: Form is used by applicants for new awards under Title VII of the Elementary and Secondary Education Act, as amended. The Act authorizes the award of grants to State and local education agencies, institutions of higher education, and non-profit private organizations, that meet the requirements of the Act and governing regulations.

[FR Doc. 83-23747 Filed 8-29-83; 8:45 am]

BILLING CODE 4000-01-M

Membership of the Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: Notice is hereby given of the names of members of the Department of Education Performance Review Board, and the schedule for awarding SES bonuses.

FOR FURTHER INFORMATION CONTACT: Martha C. Brooks, Director, Executive Resources Division, Office of Personnel Resource Management Services, Office of Management, Department of Education, (Room 1085, FOB-6), 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone: (202)472-3567.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following Senior Executive Service members have been selected to serve on the Performance Review Board

of the Department of Education: Lawrence Davenport, Co-Chair; Linda Combs, Co-Chair; Ralph Olmo; John Wu; Mark Levin; Joan Standlee; Jack Klenk; William Smith; Emerson Elliott; Shirley Jackson; Richard Hastings; Frank Ryan; Mitchell Laine; Barry Bontemps; Garry McDaniels; Sally Christensen; Earl Ingram, Ex-officio Member.

Schedule for Awarding Senior Executive Service Bonuses

The Department of Education's performance appraisal period for the Senior Executive Service ended on June 30, 1983. The appraisal process will be completed and recommendations sent to the Secretary for a decision on performance awards by September 30, 1983.

Dated: August 23, 1983.

Charles L. Heatherly,

Deputy Under Secretary for Management.

[FR Doc. 83-23746 Filed 8-29-83; 8:45 am]

BILLING CODE 4000-01-M

Special Education and Rehabilitative Services; Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on January 29, 1983, an Arbitration Panel rendered a decision in the matter of Dave S. Shell, Vendor, vs State of Nevada Rehabilitation Division, Department of Human Resources, State Licensing Agency (R-S/82-3). This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner Dave S. Shell on April 9, 1982. Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State Licensing agency. If the licensee is dissatisfied with the State agency decision, the licensee may complain to the Secretary, who is then required to convene an Arbitration Panel to resolve the dispute.

Note.—Subsequent to the issuance of the panel decision, Mr. Shell has challenged the decision in a court case filed under the judicial review procedures of the Randolph-Sheppard Act, *Shell v. Bell et al.*, CA #83-0786 (District of Columbia).

FOR FURTHER INFORMATION CONTACT: Director, Division for Blind and Visually Impaired, Rehabilitation Services, Room 3330, Mary E. Switzer Building,

Department of Education, 330 'C' Street, SW., Washington, D.C. 20202, Area Code (202) 245-0918, TTY (202) 245-0591. The full text of the Arbitration Panel decision can be obtained from this source.

Dated: August 24, 1983.

T. H. Bell,

Secretary of Education.

Arbitration Panel Decision

Petitioner Dave S. Shell, a blind person, participated in the Business Enterprise Program (BEP) administered by the State of Nevada Rehabilitation Division, Department of Human Resources, State Licensing Agency. This program is authorized by the Randolph-Sheppard Act at 20 U.S.C. 107 et seq. Mr. Shell was first granted a license by the Bureau in the summer of 1980.

Under his license, Shell was to maintain vending machines located in the Nevada Department of Transportation building, and at the same time run a candy and newstand located in another State building. The start-up capital was provided by the State. Several months after Mr. Shell began working under license, the State attempted to audit his books and records as provided for in the Rules and Regulations governing the program. At least two audits were attempted, but neither could be completed because of the absence of needed records.

In April 1981, Mervyn J. Flander, Chief of the Bureau of Services to the Blind, wrote a letter to Shell detailing specific requirements that Shell needed to comply with. A subsequent visit by Al Roybal of the Bureau disclosed that the terms of Mr. Flander's letter had not been complied with. Several areas of noncompliance with the contract and BEP rules were noted.

In an attempt to clear up any misunderstandings between what was expected of Shell, and what Shell reasonably could perform, the State entered into a new contract with Shell on June 1, 1981. Shell's agreement was to operate the vending stand in Reno, as well as to maintain and supply vending machines located at the Nevada Department of Transportation building.

This contract supplanted the earlier contract between these same parties, and the slate between the two parties was considered to be "wiped out." Exhibit F, attached to the contract and made a part of it, contained "additional special agreements" between Shell and the State. These special agreements were included in the contract to address specifically the problems that had arisen during the prior year under the first

contract, and establish specific duties of both Shell and the State.

In August 1981, Shell received notice of an audit by the State. Shell was informed by Flander that the high cost of operating supplies and telephone expenses on the July report prompted this inquiry. An audit was necessary to locate an apparent error in reporting closing inventory and opening inventory for the month of June. Shell refused to participate in the audit because the State wished to look at his records prior to June 1, 1981. Shell felt those records were irrelevant to his current performance. The State provided a rationale to Shell for the necessity of looking at records prior to June 1, 1981, and assured Shell that no disciplinary action would be taken against him should irregularities be discovered in those earlier records. Nonetheless, Shell refused to participate in the audit.

Additionally, the State received complaints from the Department of Transportation concerning Shell's servicing of vending machines in their building. Although the State attempted to help Shell establish a maintenance and service schedule, he failed to comply with that schedule.

Finally, the State noted several irregular and inadequate record-keeping practices on the part of Shell. These derelictions, combined with the other problems noted above, resulted in the State serving upon Shell a Notice of Intent to Revoke License and Notice of Fair Hearing. The hearing was held by the State on October 19, 1981, and a decision rendered on December 16, 1981. That decision revoked Shell's license.

Shell filed a complaint with the Secretary of Education on April 9, 1982, requesting arbitration under the Randolph-Sheppard Act. Shell appointed James Nyman, the State appointed Delbert Frost, and those two together agreed upon Donald H. Wollett as the Chairman of the Arbitration Panel. The hearing was held on September 24 and 25, 1982 in Reno, Nevada and on October 11, 12, 13 and November 2 and 3, 1982 in Carson City, Nevada. After receipt of briefs by the parties in mid-January 1983, the Arbitration Panel met in executive session in Carson City on January 28, 1983 and made its decision.

The panel made certain procedural rulings to the effect that arbitration under the Randolph-Sheppard Act is a *de novo* proceeding, rather than limited to a review of the record of the State agency fair hearing, and therefore cured alleged procedural defects in such hearing.

Turning to the merits, the panel, Mr. Nyman dissenting, found that the record

evidence clearly and convincingly supported the actions of the State. Specifically, Shell breached his contract with the State by refusing to participate in the audit. Second, he failed to maintain books and records as required by Exhibit F of his contract. Third, Shell failed to stock and service the vending machines in the Department of Transportation building. The panel also found that any failure that there may have been by the State in carrying out its obligations under the contract were immaterial to the breaches by Shell, were not the causative factor thereof, and therefore afforded Shell no excuse for his own breaches. Thus, the panel concluded that the revocation by the State of Nevada of petitioner's license to operate a vending facility and the termination of his business as a blind licensee was proper under the Randolph-Sheppard Act and the contract which existed between Shell and the State.

The arbitration panel decision does not necessarily represent the views of the Department of Education.

(FR Doc. 83-23748 Filed 8-29-83; 8:45 am)

BILLING CODE 4000-01-M

Special Education and Rehabilitative Services; Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act

SUMMARY: Notice is hereby given that on November 24, 1982, an arbitration panel rendered a decision in the matter of Robert Albanese, Vendor vs State of Delaware, Division for the Visually Impaired, Department of Health and Social Services, State Licensing Agency (R-S/81-5). This panel was convened by the Secretary of the Department of Education pursuant to 20 USC 107d-1(a), upon receipt of a complaint filed by petitioner Robert Albanese on September 18, 1981. Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State Licensing agency. If the licensee is dissatisfied with the State agency decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute. **NOTE:** Subsequent to the issuance of the panel decision, the Delaware Department of Health and Social Services, Division for the Visually Impaired has challenged

the decision in a court case filed under the judicial review procedures of the Randolph-Sheppard Act, *Delaware vs. U.S. Department of Education et al.*, CA No. 83-57 (D. Del.).

FOR FURTHER INFORMATION CONTACT:

Frederick Sachs, Acting Director, Division for Blind and Visually Impaired, Rehabilitation Services, Room 3030, Mary E. Switzer Building, Department of Education, 330 C Street, S.W., Washington, D.C. 20202, Area Code (202) 245-0918 or TTY (202) 245-0591. The full text of the arbitration panel decision can be obtained from this source.

Dated: August 24, 1983.

T. H. Bell,

Secretary of Education.

Arbitration Panel Decision

A blind vendor, Robert Albanese, grieved a determination by the State of Delaware's Division for the Visually Impaired to award a vacant position to another blind vendor with less seniority than Albanese (the Grievant).

Albanese retained counsel and pursued his claim consistent with the procedural requirements of the Randolph-Sheppard Act at 20 USC 107 *et seq.*, and the Department of Education Revised Interim Policies and Procedures for Randolph-Sheppard arbitrations.

It was determined as the result of a full evidentiary proceeding conducted by the State that the Grievant-Albanese was senior and qualified and should have been assigned to the position in question. Accordingly, he was awarded the position effective April 1, 1981, some seventeen (17) months subsequent to the date the Grievant claimed he should have been awarded the position.

Issues of back pay and attorney's fees were then submitted to federal arbitration and a hearing was conducted regarding these questions on September 22, 1982 before a tri-partite Arbitration Panel. The Panel rendered its decision on November 24, 1982.

The Arbitration Panel found that the questions of qualifications and seniority had been resolved in the Grievant's favor. The Panel found that there was no showing that the State acted in bad faith when it decided to award the vacancy to an individual other than the Grievant.

The Panel found that the Grievant had been wronged and suffered monetary damages as a result of his non-selection for the position in question.

The Panel found that the Grievant, after his own attempt to process his claim with the State was frustrated, acted reasonably and prudently when he retained private outside counsel.

The Panel concluded that the State's defense of sovereign immunity against a claim for monetary damages and attorney's fees was not sustained in an arbitration forum but rather was available only in judicial proceedings. The Panel further found that the State had waived whatever sovereign immunity defenses it might have had by virtue of its "full participation" in a federal program which contains arbitration procedures designed to provide remedies for State agency wrongs. Since, in the view of the Panel, the arbitration proceedings are of a private contract nature and require the application of well-understood and long-established practices for fashioning remedies for wrongs, the Panel concluded that back pay and attorney's fees could be awarded.

The Panel concluded, based upon *Moffitt and Tennessee Department of Human Services*, RS 80-8, the only Randolph-Sheppard arbitration cited, that in the same statutory framework an award of damages in the nature of back pay had been issued in order to make a blind licensee whole.

The Panel held that the Grievant was entitled to the difference between what he earned between the dates of October 1, 1979, to and through March 31, 1981, and what the individual who had been improperly awarded the position earned in that position between the same dates. Back pay was thus awarded.

A claim for interest on the back pay was denied, as such claim was considered punitive and the State's improper actions were found to have not been motivated by bad faith.

Attorney's fees were awarded, as retention of counsel was found to be reasonable and necessary in the circumstances. Attorney's fees claim was found to be reasonable and ordinary and within the fee structure of the marketplace.

The Arbitration Panel's Opinion and Award was unanimous. The Opinion and Award does not necessarily represent the views of the Department of Education.

[FR Doc. 83-23749 Filed 8-29-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on September 8 and 9, 1983, at the offices of Statoil, Forus, Stavanger, Norway, beginning at 9:30 a.m. on September 8, in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry Design Group which was established by the IEA in connection with the Fourth IEA Allocation Systems Test (AST-4). The agenda for the meeting is a review of AST-4 (including an exchange of views with a Group of Experts engaged as consultants to the IEA Secretariat).

II. A meeting of Subcommittee A of the IAB will be held on September 12, 1983, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. AST-4 matters.
3. Pricing in an emergency.
4. Industry chairmanships—staffing/succession.
5. Per diem expenses of Industry Supply Advisory Group (ISAG) members in AST-4.
6. Quarterly Oil Forecast (QOF).
7. Latest monthly Secretariat assessment.
8. Future work program.

III. A meeting of Subcommittee C of the IAB will be held on September 12, 13 and 14, 1983, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 2:00 p.m. on September 12. The meeting will be continued on September 13 and 14, if necessary, during periods of those dates when scheduled meetings of the IAB and the IEA's Standing Group on Emergency Questions (SEQ) are not in session. The agenda for the meeting is as follows:

1. Opening remarks.
2. Experience with legal clearances for AST-4.
3. Application for legal clearance under EEC treaty.
4. Status of U.S. legislation.
5. IEA Dispute Settlement Centre developments.
6. Availability of contract breach defense.
7. Future work program.

IV. A meeting of the IAB will be held on September 13, 1983, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks:
- (a) Adoption of the agenda;
- (b) Approval of Record Notes of March 7, 1983, IAB meeting.

2. Correspondence and communication with IEA and Reporting Companies.

3. AST-4 matters—reports from:

- (a) ISAG Manager;
- (b) Expert Group;
- (c) IEA Secretariat.

4. Report of Subcommittee A on its meeting of September 12, 1983.

5. Oil supply and demand:

- (a) Latest monthly Secretariat assessment;
- (b) QOF.

6. Report of Subcommittee C on its meeting of September 12, 1983.

7. Staffing of committees and groups.

8. Next IAB meeting.

V. A meeting of the IAB will be held on September 14, 1983, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m., to permit attendance by representatives of members of the IAB at a meeting of the SEQ which is being held at Paris on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

- 1. Adoption of the draft agenda.
- 2. Summary record of 44th meeting.
- 3. Oil supply and demand:
- (a) August assessment;
- (b) Questionnaire C and Monthly Oil

Statistics review:

- (c) Base Period Final Consumption;
- (d) QOF.

4. AST-4:

- (a) ISAG appraisal report;
- (b) Secretariat appraisal report;
- (c) Expert Group report;
- (d) Draft SEQ report to Governing

Board.

- 5. Pricing in an emergency.
- 6. Any other business.
- 7. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., August 25, 1983.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 83-23789 Filed 8-29-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-81-007; OFC Case No. 55001-9201-01-12]

Powerplant and Industrial Fuel Use; Exemptions; Augusta Newsprint Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice and Proposed Modification of an Order Granting Permanent Fuels Mixture Exemption to Augusta Newsprint Company, formerly Abitibi-Price Southern Corporation.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Subpart G to modify the permanent fuels mixture exemption granted by Order ("Order") to a new major fuel burning installation (MFBI), owned and operated by Augusta Newsprint Company, formerly Abitibi-Price Southern Corporation (Augusta Newsprint) at its Augusta, Georgia facility, under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*

Based upon its review of Augusta Newsprint's August 15, 1983, modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR § 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR § 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the **Federal Register** (see DATE section, below). If no responses are received within the established period, the Order modification, as proposed, shall become final upon the expiration of that period without further action by ERA.

A detailed discussion of the Order and Augusta Newsprint's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed modification of the Augusta Newsprint Order must be received no later than *September 29, 1983*.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA-093, 1000 Independence Avenue, S.W., Washington, D.C. 20585. OFC-55001-9201-01-12 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-8162

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000

Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: On June 25, 1981, ERA exempted, by Order, Augusta Newsprint's new wood waste boiler identified as boiler No. 1, at its Augusta, Georgia plant from the prohibitions of section 202 of FUA, which prohibits the use of natural gas or petroleum as a primary energy source by certain MFBI's. The Order was published in the **Federal Register** on July 7, 1982 (46 FR 35142). Subject to the terms and conditions set forth in the Order, the permanent fuels mixture exemption permitted, in a mixture with wood waste, the use of No. 6 fuel oil or natural gas in the new boiler in an amount not to exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the boiler. Augusta Newsprint's exemption request was filed under the then effective 10 CFR § 503.38 (45 FR 38276, June 6, 1980) and was granted pursuant to section 212(d) of FUA.

By letter dated August 15, 1983, Augusta Newsprint requested that ERA modify the Order to delete the annual certification part of the following reporting requirement:

"Reporting requirements: In addition to the above standard terms and conditions, APSC will, pursuant to 10 CFR 503.38(g), report to ERA the date boiler No. 1 is first operated under the provisions of this order, and will annually thereafter, at not later than 30 days after each anniversary of that date, file with ERA a certification that the amount of petroleum or natural gas used in the boiler during the preceding year did not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that MFBI. Such certifications shall be executed by a duly authorized representative of APSC."

Augusta Newsprint based its request on the fact that since the issuance of the Order with its annual reporting requirement, DOE has issued final rules amending § 503.38(g) of the interim rules so as to delete therefrom reporting requirements for boilers granted fuel mixtures exemptions (46 FR 59872, December 7, 1981).

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G (46 FR 59872, December 7, 1981). Based upon the information contained in Augusta Newsprint's modification request and upon the record as a whole, ERA proposes:

(1) To find that the revision of section § 503.38 in the final rules published on December 7, 1981, described *supra*,

constitute significantly changed circumstances that warrant a modification of the Order, as provided by 10 CFR § 501.102(b); and

(2) To modify the Order to delete therefrom the annual certification reporting requirement.

Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order exempting Augusta Newsprint's boiler No. 1 from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR § 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the *Federal Register*. If ERA receives no responses within the allotted period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C., August 25, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 83-23790 Filed 8-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 52727-1011-22-22]

Powerplant and Industrial Fuel Use; Exemptions; Southern Indiana Gas and Electric Co.

AGENCY: Economic Regulatory
Administration, Energy.

ACTION: Notice and Proposed
Modification of an Order Granting a
Permanent Peakload Exemption to
Southern Indiana Gas and Electric
Company's Broadway Unit No. 2,
Evansville, Indiana.

SUMMARY: In response to a request dated August 15, 1983, from Southern Indiana Gas and Electric Company (SIGECO), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), and 10 CFR Part 501, Subpart G, to modify the permanent peakload exemption granted by Order ("Order") to a combustion turbine powerplant identified as Broadway Unit No. 2, which is owned and operated by SIGECO at its facility located in Evansville, Indiana.

Based upon its review of SIGECO's modification request, ERA is proposing to modify the Broadway Unit No. 2 Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR § 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving

notice to all parties to the original proceeding of their right, pursuant to 10 CFR § 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the *Federal Register* (see DATE section, below). If no responses are received within this period, the Order modification, as proposed, for the combustion turbine shall become final upon the expiration of the period, without further action by ERA.

A detailed discussion of the Order and SIGECO's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed modification of the SIGECO Order must be received by ERA no later than September 29, 1983.

ADDRESS: Written responses must be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA-093, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The case number, OFC 52727-1011-22-22, should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-8162.

Maya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: On December 29, 1980, ERA issued an Order exempting SIGECO's Broadway Unit No. 2, located at its facility in Evansville, Indiana, from the prohibitions of Title II of FUA (46 FR 1016, January 5, 1981). Section 201 of FUA prohibits both the use of natural gas or petroleum as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source (10 CFR § 503.2). SIGECO's exemption petition was filed and the permanent exemption was granted under Section 503.41 of ERA's interim rules for new facilities and Section 212(g) of FUA, which provide for permanent peakload exemptions for new electric powerplants. Subject to the terms and conditions set forth in the Order, the permanent exemption permitted the use of oil/natural gas to

meet peakload requirements in the combustion turbine powerplant.

By letter dated August 15, 1983, SIGECO requested that ERA modify the Order for Broadway Unit No. 2 to delete the reporting requirements of the following terms and conditions:

"A. SIGECO shall not produce more than 122,160,000 KWH during any 12-month period with the proposed unit. SIGECO shall provide annual estimates of the expected periods (hours during specific months) of operation of Broadway 2 for peakload purposes (e.g., 8:00-10:00 a.m. and 3:00-6:00 p.m. during the June-September period, etc.). Estimates of the hours in which SIGECO expects to operate Broadway 2 inside the first 12-month period shall be furnished within 30 days from the date of this order.", and

"B. SIGECO shall comply with the reporting requirements set forth in 10 CFR § 503.41(d)."

SIGECO based its request on the fact that, since the issuance of the Order with the stated annual reporting requirements, DOE has issued final rules amending Section 503.41 of the interim rules by deleting the reporting requirements for a facility operating under a peakload powerplant exemption (46 FR 59872, December 7, 1981).

As requested, ERA has, pursuant to 10 CFR § 501.101(a), commenced a proceeding to modify the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart B. Based upon the information contained in SIGECO's modification request and upon the record as a whole, ERA proposes:

(1) To find that the revision of Section 503.41 in the final rules published on December 7, 1981, described *supra*, constitutes a significantly changed circumstance that warrants modification of the Order, as provided by 10 CFR § 501.102(b);

(2) To modify the Broadway Unit No. 2 exemption Order issued on December 29, 1980 (46 FR 1016, January 5, 1981), to delete all of the language of Term and Condition A following the sentence, "SIGECO shall not produce more than 122,160,000 KWH during any 12-month period with the proposed Unit.", and to delete Term and Condition B in its entirety.

Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order exempting SIGECO's peakload powerplant, Broadway Unit No. 2, from the prohibitions of Section 201 of FUA and of their right pursuant to 10 CFR § 501.101(d) to file a response thereto

within 30 days after the publication of this notice in the *Federal Register*. If ERA receives no responses within the allotted period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C., on August 24, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 83-23788 Filed 8-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-176, as Amended]

**American Sugar Div., Amstar Corp.;
Amended Certification of Eligible Use
of Natural Gas to Displace Fuel Oil**

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following application to amend an existing certification of the eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of this application, along with pertinent

information contained in the amendment request, was published in the *Federal Register* and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in the application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

| Applicant and facility | Existing certification number and dated issued | Date amendment filed | FEDERAL REGISTER notice of applicant's amendment |
|--------------------------------------------------------------------|------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------|
| American Sugar Div., Amstar Corp., Baltimore Plant, Baltimore, Md. | 83-CERT-176, July 5, 1983 | June 28, 1983, July 5, 1983, July 27, 1983, Aug. 5, 1983. | 48 FR 36312, August 10, 1983. |

The ERA has carefully reviewed the above applications to amend an existing certification in accordance with 10 CFR 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the amended certification and transmitted that amended certification to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic
Regulatory Administration.

[FR Doc. 83-23716 Filed 8-29-83; 8:45 am]

BILLING CODE 6450-01-M

**Federal Energy Regulatory
Commission**

Edward L. Addison; Application

[Docket No. ID-2061-000]

August 25, 1983.

The filing individual submits the following:

Take notice that on August 17, 1983, Edward L. Addison filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

- Director and Vice President, Alabama Power Company.
- Director and Vice President, Georgia Power Company.
- Director and Vice President, Gulf Power Company.

Director and Vice President, Mississippi Power Company.

Director, Southern Electric Generating Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23817 Filed 8-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-422-000]

**Arkansas Louisiana Gas Company, a
Division of Arkla, Inc.; Request Under
Blanket Authorization**

August 25, 1983.

Take notice that on July 15, 1983, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP83-422-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Arkla proposes to construct

and operate a sales tap on its jurisdictional line 0-577 to permit a direct sale of gas to David Quick in Haskell County, Oklahoma, under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the gas would be used to operate brooders in a chicken hatchery (Arkla's Priority No. 1.1 in its curtailment plan) and that it is anticipated that this particular customer will need about 1,000 Mcf of gas per year.

Arkla states that the impact of service to the new customer would be *de minimis* upon the gas supply of the Arkla system, which during 1982 handled 394,607,813 Mcf. Arkla also indicates it projects no curtailment except on spike peaks on the Arkla system in the foreseeable future.

The estimated cost of the proposed tap is said to be \$1,280.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the request shall be

treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23814 Filed 8-29-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-452-000]

**Columbia Gas Transmission Corp. and
Columbia Gulf Transmission Co.;
Informal Conference**

August 25, 1983.

Take notice that on September 1, 1983, an informal conference will be held in Docket No. CP83-452-000 to discuss issues raised by the joint application of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, filed pursuant to section 7(c) of the Natural Gas Act.

The Conference will be held at 10:00 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. All interested parties are permitted to attend but attendance at the conference will not be deemed to authorize intervention as a party in these proceedings.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23815 Filed 8-29-83; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 4157-999, et al]

**Consolidated Hydroelectric, Inc.;
Public Meeting**

August 26, 1983

The Federal Energy Regulatory Commission has before it a number of applications for hydropower development in the Trinity River Basin. In response to petitions to the Commission to consider the cumulative environmental effects of hydropower in the basin, the Commission staff will hold a public meeting at 1:00 pm—5:00 pm on September 22, 1983 in Room 127 of the Food and Agriculture Building, 1220 N Street, Sacramento, California.

The purpose of the meeting will be to determine the scope and validity of the issues involved. Emphasis will be upon technical verification of the various contentions. For example, what resource would be impacted by cumulative effects where, how and to what extent? Participants should be prepared to file written comments at the meeting or within two weeks thereafter. Written comments should be sent to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North

Capitol Street, N.E., Washington, D.C. 20426. In order to coordinate the meeting and ensure that all verbal presentations are heard, all interested persons who wish to speak longer than 10 minutes should notify David Boergers at (202) 357-8492, at least seven days prior to the meeting.

For further information please contact David Boergers (202) 357-8492, Joseph Vasapoli (202) 357-5630 or Tom Russo on (202) 376-9061.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23816 Filed 8-29-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP77-363-007]

**National Fuel Gas Supply Corp. and
Columbia Gas Transmission Corp.;
Amendment**

August 25, 1983.

Take notice that on August 12, 1983,¹ National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP71-363-007 an amendment to its pending petition to amend the order issued February 8, 1980, in Docket No. CP77-363 pursuant to Section 7(c) of the Natural Gas Act so as to reflect Columbia Gas Transmission Corporation (Columbia) as joint petitioner and to delete a portion of the petition to amend, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

National Fuel proposes to include Columbia as a joint petitioner² and to withdraw Article VII of the petition to amend, which alleged that the proposal contained in the subject petition to amend filed by National Fuel would reduce unnecessary purchases of natural gas from Columbia.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 14, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

¹ The amendment was initially tendered for filing on August 12, 1983; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until August 22, 1983, thus filing was not completed until the latter date.

² Columbia and National Fuel were joint recipients of the authorization issued in Docket No. CP77-363.

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23818 Filed 8-29-83; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 619-999, et al]

**Pacific Gas & Electric Co., et al; Public
Meeting**

August 26, 1983.

The Federal Energy Regulatory Commission has before it a number of applications for hydropower development in the North Feather River Basin. In response to petitions to the Commission to consider the cumulative environmental effects of hydropower in the basin, the Commission staff will hold a public meeting at 8:00 am—12:00 noon on September 22, 1983 in Room 127 of the Food and Agriculture Building, 1220 N Street, Sacramento, California.

The purpose of the meeting will be to determine the scope and validity of the issues involved. Emphasis will be upon technical verification of the various contentions. For example, what resource would be impacted by cumulative effects where, how and to what extent? Participants should be prepared to file written comments at the meeting or within two weeks thereafter. Written comments should be sent to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. In order to coordinate the meeting and ensure that all verbal presentations are heard, all interested persons who wish to speak longer than 10 minutes should notify David Boergers at (202) 357-8492 at least seven days prior to the meeting.

For further information please contact David Boergers (202) 357-8492, Joseph Vasapoli (202) 357-5630 or Tom Russo (202) 376-9061.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23819 Filed 8-29-83; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 1394-999, et al]

**Southern California Edison Co., et al;
Notice of Public Meeting**

August 26, 1983.

The Federal Energy Regulatory Commission has before it a number of applications for hydropower development in the Owens River Basin. In response to petitions to the Commission to consider the cumulative environmental effects of hydropower in the basin, the Commission staff will hold a public meeting at 1:00 p.m.-5:00 p.m. on September 21, 1983 in Room 127 of the Food and Agriculture Building, 1220 N Street, Sacramento, California.

The purpose of the meeting will be to determine the scope and validity of the issues involved. Emphasis will be upon technical verification of the various contentions. For example, what resource would be impacted by cumulative effects, how and to what extent? Participants should be prepared to file written comments at the meeting or within two weeks thereafter. Written comments should be sent to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. In order to coordinate the meeting and ensure that all verbal presentations are heard, all interested persons who wish to speak longer than 10 minutes should notify David Boergers at (202) 357-8492 at least seven days prior to the meeting.

For further information please contact David Boergers (202) 257-8492, Joseph Vasapoli (202) 357-5630 or Tom Russo (202) 376-9061.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23821 Filed 8-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 67-999, et al]

Southern California Edison Co., et al;

August 26, 1983.

The Federal Energy Regulatory Commission has before it a number of applications for hydropower development in the Upper San Joaquin River Basin. In response to petitions to the Commission to consider the cumulative environmental effects of hydropower in the basin, the Commission staff will hold a public meeting at 8:00 am-12:00 noon on September 21, 1983 in Room 127 of the Food and Agriculture Building, 1220 N Street, Sacramento, California.

The purpose of the meeting will be to determine the scope and validity of the issues involved. Emphasis will be upon

technical verification of the various contentions. For example, what resource would be impacted by cumulative effects where, how and to what extent? Participants should be prepared to file written comments at the meeting or within two weeks thereafter. Written comments should be sent to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. In order to coordinate the meeting and ensure that all verbal presentations are heard, all interested persons who wish to speak longer than 10 minutes should notify David Boergers at (202) 357-8492 at least seven days prior to the meeting.

For further information please contact David Boergers (202) 357-8492, Joseph Vasapoli (202) 357-5630 or Tom Russo (202) 376-9061.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23821 Filed 8-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-464-000]

Zenith Natural Gas Co.; Application

August 25, 1983.

Take notice that on August 12, 1983, Zenith Natural Gas Company (Applicant), 601 South Boulder Avenue, Tulsa, Oklahoma 74119, filed in Docket No. CP83-464-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during an indefinite period commencing August 1, 1983, and operation of facilities to enable Applicant to take into its pipeline system natural gas supplies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supply of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which maybe authorized to transport gas for the account of or exchange gas with Applicant and supplies of natural gas from Applicant's own production or acquired for system supply under Sections 311 or 312 of the Natural Gas Policy Act of 1978.

Applicant states that the total cost of facilities will not exceed \$500,000 as provided in § 157.7(b)(1)(i) of the

Commission's Regulations. The cost of the proposed facilities would be financed from funds on hand, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 15, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-23823 Filed 8-29-83; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPTS-51469C BH-FRL 2424-6]

**Disubstituted Heterocycle,
Premanufacture Notice; Extension of
Review Period**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) PMN 83-769 under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on November 19, 1983.

FOR FURTHER INFORMATION CONTACT: Paul Matthai, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, D.C. 20460 (202-382-3746).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a PMN to EPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On May 24, 1983, EPA received PMN 83-769 for a substance described generically as disubstituted heterocycle. The PMN substance will be manufactured for use as a chemical intermediate. The submitter claimed its identity, chemical identity, production volume, and marketing data to be confidential business information. Notice of receipt of the PMN was published in the *Federal Register* of June 3, 1983 (48 FR 24968). The original 90-day review period is scheduled to expire on August 21, 1983.

EPA's detailed analysis of the substance described in the PMN addressed the following: chemical analysis of the PMN substance, effects on human health, human exposure, production volume, environmental release, ecological effects, degree of risk relative to available commercial substitutes, potential marketability, and the identification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe that significant worker exposure to the PMN substance during manufacturing may result in adverse health effects, among which may be carcinogenicity and/or mutagenicity.

Based on this analysis, EPA finds that there is a possibility that the substance submitted for review in PMN 83-769 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to examine its regulatory options and to prepare the necessary documents, should regulatory action be required. An administrative order under section 5(e) must be issued no later than 45 days prior to the expiration of the review period. Therefore, EPA has determined

that good cause exists to extend the review period for an additional 90 days, to November 19, 1983.

PMN 83-769 is available for public inspection in Rm. E-107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holiday.

Dated: August 19, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

(FR Doc. 83-30731 Filed 8-29-83; 8:45 am)

BILLING CODE 5560-01-M

[OPTS-51344C; BH-FRL 2424-5]

Mono-azo Dye; Premanufacture Notice; Termination of an Extended Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is terminating the remaining period of a 90-day extension of the review period for premanufacture notice (PMN) PMN 81-558, which was issued pursuant to section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on August 22, 1983. The PMN was submitted for a water-soluble, fiber-reactive, mono-azo dye which will be imported by a company which has claimed its identity to be confidential.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-205, 401 M St., SW., Washington, D.C. 20460 (202-382-3735).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a PMN to EPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On October 29, 1981, EPA received PMN 81-558 from a confidential submitter for the following chemical: 4-hydroxy-3-[5-(2-hydroxysulfonyloxy)ethylsulfonyl]-2-methoxyphenylazo-7-succinylamino-2-naphthalenesulfonic acid, disodium salt. Notice of receipt was published in the *Federal Register* of November 6, 1981 (46 FR 55145). The chemical is a fiber-reactive dye for cellulosic fabrics.

The original review period was scheduled to expire on January 26, 1982. On January 29, 1983, EPA published a notice in the *Federal Register* (47 FR 4335) extending the review period for an additional 90 days, to April 26, 1982. On

January 27, 1982, the PMN submitter voluntarily suspended the review period.

When the review period was extended, EPA had reason to believe that azo reduction of the substance described in PMN 81-558 would produce analogues of carcinogens. Significant occupational exposure and possible drinking water contamination were expected. While the period was suspended, additional testing was conducted to address this concern. Based on analysis of the test results, the Agency has determined that there is insufficient basis for determining that PMN 81-558 may present an unreasonable risk. EPA finds that it will not be necessary to regulate PMN 81-558 under section 5(e) of TSCA. Therefore, the Agency no longer requires the additional review time provided by section 5(c), and terminates the remaining portion of the 90-day extension.

PMN 81-558 is available for public inspection in Rm. E-107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The identity of the submitter has been kept confidential and has been deleted from the documents in the public record.

Dated: August 22, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

(FR Doc. 83-23752 Filed 8-29-83; 8:45 am)

BILLING CODE 5560-50-M

DEPARTMENT OF AGRICULTURE

Farm Credit Administration

[Farm Credit Administration Order No. 844]

Puget Sound Production Credit Association; Order Establishing Procedures

AGENCY: Farm Credit Administration, USDA.

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration ("FCA") has issued Order No. 844, effective August 10, 1983, declaring the Class B stock and participation certificates of the Puget Sound Production Credit Association, Mt. Vernon, Washington, ("PCA") to be impaired and imposing special supervisory procedures upon the PCA pursuant to 12 CFR 611.1140. The procedures restrict the transfer or retirement of any class of stock of the PCA, restrict the PCA's lending authority, and require that corporate authorities be exercised by the PCA's

directors and employees only in accordance with procedures prescribed by the FCA or with the prior approval of the FCA. The order designates Larry W. Edwards, an FCA employee, as the official representative of the FCA, with full authority to implement the procedures and to give approvals required thereunder. The order will remain in effect until modified or terminated by the Governor. The text of the order is as follows:

In the exercise of its supervisory powers and authorities under the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.*, with respect to the institutions of the Farm Credit System, the Farm Credit Administration ("FCA") hereby finds that the outstanding shares of Class B capital stock and participation certificates of Puget Sound Production Credit Association ("Puget Sound") have a book value of less than their respective par and stated values.

Therefore, pursuant to 12 CFR 611.1140, the FCA hereby orders that further operations of Puget Sound on and after August 10, 1983, shall be subject to the following procedures:

1. No resolution adopted or other action taken by the board of directors of Puget Sound on or after the effective date of this order shall be operative or effective unless previously approved by the FCA, except as otherwise provided in such additional procedures as the FCA may from time to time prescribe.

2. The board of directors of Puget Sound shall execute an agreement with the Southwest Washington Production Credit Association ("Southwest") providing that Southwest will make and service loans to eligible applicants not currently indebted to Puget Sound to finance operations in the chartered territory of Puget Sound during the effective period of this order. The terms of said agreement are set forth as Exhibit 1 to this order. In the event the board of directors fails for any reason to execute such an agreement, the president of Puget Sound shall be authorized to do so on behalf of such association.

3. No capital stock, participation certificates, equity reserves or allocated equities of Puget Sound shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities, except as provided for under such procedures as may be approved in advance by the FCA relating to the assignment of equities in conjunction with the sale and transfer of loans to other production credit associations, or the other purposes as otherwise approved by the FCA.

4. No action taken by an officer or employee of Puget Sound during the effective period of this order exercise of any power or authority granted to such officer or employee by statute, regulation, delegation, resolution or order of the board, or otherwise, shall be operative or effective unless previously approved by the FCA, except as provided in such additional procedures as FCA may from time to time prescribe in connection with the operations or affairs of Puget Sound including, but not limited to, the purchase or sale of any asset, including fixtures; the extension or commitment to extend credit or financial assistance, including additional advances on existing loans; the conduct of litigation; the hiring or discharge of any officer or employee; the payment of any obligation or indebtedness; or the making of any verbal or written agreement, commitment or obligation for the purchase or sale of any services or property, both real and personal.

5. Puget Sound shall not settle out of court any litigation to which it is a party that is presently pending or hereafter commenced, without the prior consent of the FCA.

During the effective period of this order, the FCA shall conduct a financial audit and prepare an accounting of the books, records and assets of Puget Sound and take such action as may be necessary to preserve such assets pending a final determination of the financial condition and the viability of Puget Sound. The FCA shall consider such options as may be available for the continuation of service by institutions of the Farm Credit System to eligible borrowers and applications heretofore served by the Puget Sound, including consolidation, transfer of territories or other structural or charter changes.

For the purpose of facilitating the operations of Puget Sound during the term of this order, Larry W. Edwards, an employee of the FCA, is hereby designated as the official representative of the FCA with full authority to implement the terms of this order and such additional procedures as the FCA may from time to time prescribe, including authority to execute written instruments of approval and to give such oral approvals as may be required hereunder. The official representative may delegate such authorities to other FCA employees or employees of the Federal Intermediate Credit Bank of Spokane when such delegation is in the interest of effective administration.

This order and such additional procedures as the FCA may from time to time prescribe supersede the bylaws of

Puget Sound to the extent of any inconsistency.

This order shall remain in effect until modified or terminated in writing by the Governor.

Donald E. Wilkinson,
Governor.

Agreement

Whereas on August 10, 1983, the Farm Credit Administration issued an Order Establishing Procedures ("Order") with respect to Puget Sound Production Credit Association:

Whereas the undersigned parties believe that the current financial condition of the Puget Sound Production Credit Association and its level of confidence enjoyed in the community currently impedes its ability to provide service on reasonable rates and terms to eligible borrowers in its territory:

Whereas the undersigned parties believe that it is in the best interest of the Farm Credit System ("System") and the institutions in the 12th Farm Credit District to continue to provide such eligible borrowers with a dependable source of credit and services from a System institution:

Now, therefore the Puget Sound Production Credit Association ("Puget Sound"), the Southwest Washington Production Credit Association ("Southwest") and the Federal Intermediate Credit Bank of Spokane ("Bank") agree that pursuant to FCA Regulation 12 CFR 614.4070 and the policies of the Bank issued thereunder, Southwest is authorized, during the period in which Puget Sound is subject to the provisions of the Order, to provide credit to eligible applicants not currently indebted to Puget Sound, to finance operations in the chartered territory of Puget Sound.

The Parties agree that in the event the Order expires or is terminated and Puget Sound resumes normal operations, any loans made by Southwest pursuant to this agreement will be sold and transferred to Puget Sound at Puget Sound's discretion. Each borrower shall agree to the terms of this condition prior to the disbursement of funds on any such loan.

The Parties agree that in the event the territory of Puget Sound is transferred to a production credit association ("PCA") other than Southwest in conjunction with a merger, consolidation, territorial transfer, liquidation or otherwise, any loans made by Southwest pursuant to this agreement shall be sold and transferred to the PCA serving such territory, at such other PCA's discretion. Each borrower shall agree to the terms of this condition prior to the disbursement of funds on any such loan.

The Parties further agree that in consideration of the payment by Southwest of fees, in accordance with a schedule of fees which is attached hereto and incorporated as a part of this agreement, Puget Sound agrees to act as agent for Southwest to accept applications from eligible applicants not currently indebted to Puget Sound and make related credit investigations of such applicants with operations in the chartered territory of Puget Sound. All other activities

associated with such loans shall be within the exclusive control of Southwest, including, but not limited to: the making of credit decisions, disbursing of proceeds, acceptance of payments, and all other activities associated with making, renewing, servicing, and accounting for such loans.

Title _____
Federal Intermediate Credit Bank of Spokane
Date: _____

Title _____
Puget Sound Production Credit Association
Date: _____

Title _____
Southwest Livestock Production Credit Association
Date: _____

[FR Doc. 83-23737 Filed 8-29-83; 6:45 am]

BILLING CODE 6705-01-M

[Farm Credit Administration Order No. 845]

Southern Oregon Production Credit Association; Order Establishing Procedures

AGENCY: Farm Credit Administration, 450A.

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration ("FCA") has issued Order No. 845, effective August 10, 1983, declaring the class D stock of the Southern Oregon Production Credit Association, Medford, Oregon, ("PCA") to be impaired and imposing special supervisory procedures upon the PCA pursuant to 12 CFR 611.1140. The procedures restrict the transfer or retirement of any class of stock of the PCA, restrict the PCA's lending authority, and require that corporate authorities be exercised by the PCA's directors and employees only in accordance with procedures prescribed by the FCA or with the prior approval of the FCA. The order designates Larry W. Edwards, an FCA employee, as the official representative of the FCA, with full authority to implement the procedures and to give approvals required thereunder. The order will remain in effect until modified or terminated by the Governor. The text of the order is as follows:

In the exercise of its supervisory powers and authorities under the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.*, with respect to the institutions of the Farm Credit System, the Farm Credit Administration ("FCA") hereby finds that the share of Class D capital stock of Southern Oregon Production Credit Association ("Southern Oregon") have a book value of less than their respective par and

stated values. Therefore, pursuant to 12 CFR 611.1140, the FCA hereby orders that further operations of Southern Oregon on and after August 10, 1983, shall be subject to the following procedures:

1. No resolution adopted or other action taken by the board of directors of Southern Oregon on or after the effective date of this order shall be operative or effective unless previously approved by the FCA, except as otherwise provided in such additional procedures as the FCA may from time to time prescribe.

2. The board of directors of Southern Oregon shall execute an agreement with the Northwest Livestock PCA ("Northwest") providing that Northwest will make and service loans to eligible applicants not currently indebted to Southern Oregon to finance operations in the chartered territory of Southern Oregon during the effective period of this order. The terms of said agreement are set forth as Exhibit 1 to this order. In the event the board of directors fails for any reason to execute such an agreement, the president of Southern Oregon shall be authorized to do so on behalf of such association.

3. No capital stock, participation certificates, equity reserves or allocated equities of Southern Oregon shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities, except as provided under such procedures as may be approved in advance by the FCA relating to the assignment of equities in conjunction with the sale and transfer of loans to other production credit associations, or for other purposes as otherwise approved by the FCA.

4. No action taken by an officer or employee of Southern Oregon during the effective period of this order in the exercise of any power or authority granted to such officer or employee by statute, regulation, delegation, resolution or order of the board, or otherwise, shall be operative or effective unless previously approved by the FCA, except as provided in such additional procedures as the FCA may from time to time prescribe in connection with the operations or affairs of Southern Oregon including, but not limited to, the purchase or sale of any asset, including fixtures; the extension or commitment to extend credit or financial assistance, including additional advances on existing loans; the conduct of litigation; the hiring or discharge of any officer or employee; the payment of any obligation or indebtedness; or the making of any verbal or written agreement, commitment or obligation for the

purchase or sale of any services or property, both real and personal.

5. Southern Oregon shall not settle out of court any litigation to which it is a party that is presently pending or hereafter commenced, without the prior consent of the FCA.

During the effective period of this order, the FCA shall conduct a financial audit and prepare an accounting of the books, records and assets of Southern Oregon and take such action as may be necessary to preserve such assets pending a final determination of the financial condition and viability of Southern Oregon. The FCA shall consider such options as may be available for the continuation of service by institutions of the Farm Credit System to eligible borrowers and applicants heretofore served by the Southern Oregon, including consolidation, transfer of territories or other structural or charter changes.

For the purpose of facilitating the operations of Southern Oregon during the term of this order, Larry W. Edwards, an employee of the FCA, is hereby designated as the official representative of the FCA with full authority to implement the terms of this order and such additional procedures as the FCA may from time to time prescribe, including the authority to execute written instruments of approval and to give such oral approvals as may be required hereunder. The official representative may delegate such authorities to other FCA employees or employees of the Federal Intermediate Credit Bank of Spokane when such delegation is in the interest of effective administration.

This order and such additional procedures as the FCA may from time to time prescribe supersede the bylaws of Southern Oregon to the extent of any inconsistency.

This order shall remain in effect until modified or terminated in writing by the Governor.

Donald E. Wilkinson,
Governor.

Agreement

Whereas on August 10, 1983, the Farm Credit Administration issued an Order Establishing Procedures ("Order") with respect to Southern Oregon Production Credit Association;

Whereas the undersigned parties believe that the current financial condition of the Southern Oregon Production Credit Association and its level of confidence enjoyed in the community currently impedes its ability to provide service on reasonable rates and terms to eligible borrowers in its territory;

Whereas the undersigned parties believe that it is in the best interest of the Farm Credit System ("System") and the institutions in the 12th Farm Credit District to continue to provide such eligible borrowers with a dependable source of credit and services from a System institution;

Now, therefore, the Southern Oregon Production Credit Association ("Southern Oregon"), the Northwest Livestock Production Credit Association ("Northwest") and the Federal Intermediate Credit Bank of Spokane ("Bank") agree that pursuant to FCA Regulation 12 CFR 614.4070 and the policies of the Bank issued thereunder, Northwest is authorized, during the period in which Southern Oregon is subject to the provisions of the Order, to provide credit to eligible applicants not currently indebted to Southern Oregon, to finance operations in the chartered territory of Southern Oregon.

The Parties agree that in the event the Order expires or is terminated and Southern Oregon resumes normal operations, any loans made by Northwest pursuant to this agreement will be sold and transferred to Southern Oregon at Southern Oregon's discretion. Each borrower shall agree to the terms of this condition prior to the disbursement of funds on any such loan.

The Parties agree that in the event the territory of Southern Oregon is transferred to a production credit association ("PCA") other than Northwest in conjunction with a merger, consolidation, territorial transfer, liquidation or otherwise, any loans made by Northwest pursuant to this agreement shall be sold and transferred to the PCA serving such territory, at such other PCA's discretion. Each borrower shall agree to the terms of this condition prior to the disbursement of funds on any such loan.

The Parties further agree that in consideration of the payment by Northwest of fees, in accordance with a schedule of fees which is attached hereto and incorporated as a part of this agreement, Southern Oregon agrees to act as agent for Northwest to accept applications from eligible applicants not currently indebted to Southern Oregon and make related credit investigations of such applicants with operations in the chartered territory of Southern Oregon. All other activities associated with such loans shall be within the exclusive control of Northwest, including, but not limited to: the making of credit decisions, disbursing of proceeds, acceptance of payments, and all other activities associated with making, renewing, servicing, and accounting for such loans.

Title _____
Federal Intermediate Credit Bank of Spokane
Date: _____

Title _____
Southern Oregon Production Credit
Association
Date: _____

Title _____
Northwest Livestock Production Credit
Association

Date: _____
[FR Doc. 83-23736 Filed 8-29-83; 8:45 am]
BILLING CODE 6705-01-M

[Farm Credit Administration Order No. 846]

Willamette Production Credit Association; Order Establishing Procedures

AGENCY: Farm Credit Administration; USDA.

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration ("FCA") has issued Order No. 846, effective August 10, 1983, declaring the Class B stock and participation certificates of the Willamette Production Credit Association, Salem, Oregon, ("PCA") to be impaired and imposing special supervisory procedures upon the PCA pursuant to 12 CFR 611.1140. The procedures restrict the transfer or retirement of any class of stock of the PCA, restrict the PCA's lending authority, and require that corporate authorities be exercised by the PCA's directors and employees only in accordance with procedures prescribed by the FCA or with the prior approval of the FCA. The order designates Larry W. Edwards, an FCA employee, as the official representative of the FCA, with full authority to implement the procedures and to give approvals required thereunder. The Order will remain in effect until modified or terminated by the Governor. The text of the order is as follows:

In the exercise of its supervisory powers and authorities under the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.*, with respect to the institutions of the Farm Credit System, the Farm Credit Administration ("FCA") hereby finds that the outstanding shares of Class B capital stock and participation certificates of Willamette Production Credit Association ("Willamette") have a book value of less than their respective par and stated values. Therefore, pursuant to 12 CFR 611.1140, the FCA hereby orders that further operations of Willamette on and after August 10, 1983, shall be subject to the following procedures:

1. No resolution adopted or other action taken by the board of directors of Willamette on or after the effective date of this order shall be operative or effective unless previously approved by the FCA, except as otherwise provided in such additional procedures as the FCA may from time to time prescribe.

2. The board of directors of Willamette shall execute an agreement with the Northwest Livestock PCA

("Northwest") providing that Northwest will make and service loans to eligible applicants not currently indebted to Willamette to finance operations in the chartered territory of Willamette during the effective period of this order. The terms of the said agreement are set forth as Exhibit 1 to this order. In the event the board of directors fails for any reason to execute such an agreement, the president of Willamette shall be authorized to do so on behalf of such association.

3. No capital stock, participation certificates, equity reserves or allocated equities of Willamette shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities, except as provided under such procedures as may be approved in advance by the FCA relating to the assignment of equities in conjunction with the sale and transfer of loans to other production credit associations, or for other purposes as otherwise approved by the FCA.

4. No action taken by an officer or employee of Willamette during the effective period of this order in the exercise of any power or authority granted to such officer or employee by statute, regulation, delegation, resolution or order of the board, or otherwise, shall be operative or effective unless previously approved by the FCA, except as provided in such additional procedures as the FCA may from time to time prescribe in connection with the operations or affairs of Willamette including, but not limited to, the purchase or sale of any asset, including fixtures; the extension or commitment to extend credit or financial assistance, including additional advances on existing loans; the conduct of litigation; the hiring or discharge of any officer or employee; the payment of any obligation or indebtedness; or the making of any verbal or written agreement, commitment or obligation for the purchase or sale of any services or property, both real and personal.

5. Willamette shall not settle out of court any litigation to which it is a party that is presently pending or hereafter commenced, without the prior consent of the FCA.

During the effective period of this order, the FCA shall conduct a financial audit and prepare an accounting of the books, records and assets of Willamette and take such action as may be necessary to preserve such assets pending a final determination of the financial condition and viability of Willamette. The FCA shall consider such options as may be available for the

continuation of service by institutions of the Farm Credit System to eligible borrowers and applicants heretofore served by Willamette, including consolidation, transfer of territories or other structural or charter changes.

For the purpose of facilitating the operations of Willamette during the term of this order, Larry W. Edwards, an employee of the FCA, is hereby designated as the official representative of the FCA with full authority to implement the terms of this order and such additional procedures as the FCA may from time to time prescribe, including authority to execute written instruments of approval and to give such oral approvals as may be required hereunder. The official representative may delegate such authorities to other FCA employees or employees of the Federal Intermediate Credit Bank of Spokane when such delegation is in the interest of effective administration.

This order and such additional procedures as the FCA may from time to time prescribe supersede the bylaws of Willamette to the extent of any inconsistency.

This order shall remain in effect until modified or terminated in writing by the Governor of the FCA.

Donald E. Wilkinson,

Governor.

Agreement

Whereas On August 10, 1983, the Farm Credit Administration issued an *Order Establishing Procedures* ("Order") with respect to Willamette Production Credit Association:

Whereas the undersigned parties believe that the current financial condition of the Willamette Production Credit Association and its level of confidence enjoyed in the community currently impedes its ability to provide service on reasonable rates and terms to eligible borrowers in its territory;

Whereas the undersigned parties believe that it is in the best interest of the Farm Credit System ("System") and the institutions in the 12th Farm Credit District to continue to provide such eligible borrowers with a dependable source of credit and services from a System institution;

Now, therefore, the Willamette Production Credit Association ("Willamette"), the Northwest Livestock Production Credit Association ("Northwest") and the Federal Intermediate Credit Bank ("Bank") agree that pursuant to FCA Regulation 12 CFR 614.4070 and the policies of the Bank issued thereunder, Northwest is authorized, during the period in which Willamette is subject to the provisions of the Order, to provide credit to eligible applicants not currently indebted to Willamette, to finance operations in the chartered territory of Willamette.

The Parties agree that in the event the Order expires or is terminated and Willamette resumes normal operations, any loans made by Northwest pursuant to this agreement will be sold and transferred to Willamette at Willamette's discretion. Each borrower shall agree to the terms of this condition prior to the disbursement of funds on any such loan.

The Parties agree that in the event the territory of Willamette is transferred to a production credit association ("PCA") other than Northwest in conjunction with a merger, consolidation, territorial transfer, liquidation or otherwise, any loans made by Northwest pursuant to this agreement shall be sold and transferred to the PCA serving such territory, at such other PCA's discretion. Each borrower shall agree to the terms of this condition prior to the disbursement of funds on any such loan.

The Parties further agree that in consideration of the payment by Northwest of fees, in accordance with a schedule of fees which is attached hereto and incorporated as a part of this agreement, Willamette agrees to act as agent for Northwest to accept applications from eligible applicants not currently indebted to Willamette and make related credit investigations of such applicants with operations in the chartered territory of Willamette. All other activities associated with such loans shall be within the exclusive control of Northwest, including,

but not limited to: the making of credit decisions, disbursing of proceeds, acceptance of payments, and all other activities associated with making, renewing, servicing, and accounting for such loans.

Title _____
Federal Intermediate Credit Bank of Spokane
Date: _____

Title _____
Willamette Production Credit Association
Date: _____

Title _____
Northwest Livestock Production Credit Association
Date: _____

[FR Doc. 83-23738 Filed 8-29-83; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

[File No. BPH-810630AD; MM Docket No. 83-846 et al.]

Applications for Consolidated Hearing; Billy B. Carney et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/State | File No. | MM Docket No. |
|---------------------------------------|---------------|--------------|---------------|
| A. Billy B. Carney | Washburn, Mo. | BPH-810630AD | 83-846 |
| B. Hopkins, Hall and Associates, Inc. | Seligman, Mo. | BPH-820607AR | 83-847 |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for heading in a consolidated proceeding upon issues whose hearings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|-----------------------------|--------------|
| 1. Financial Qualifications | B. |
| 2. 307(B) | A and B. |
| 3. Contingent Comparative | A and B. |
| 4. Ultimate | A and B. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 83-23790 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-820326AP; MM Docket No. 83-821 et al.]

Applications for Consolidated Hearing; Fletcher Communication Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/State | File No. | MM Docket No. |
|-----------------------------------------------------------|----------------|--------------|---------------|
| A. W. E. Fletcher, d.b.a. Fletcher Communications Company | Seward, Alaska | BPH-820326AP | 83-821 |
| B. Mildred Townsend | Seward, Alaska | BPH-820626AE | 83-822 |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidation proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|----------------|--------------|
| 1. Comparative | A. and B. |
| 2. Ultimate | A. and B. |

| Applicant | City/State | File No. | MM Docket No. |
|-----------------------------------------------------------------------------------|-------------------|--------------|---------------|
| A. Fox Com, Ltd. | Natchitoches, La. | BPH-820223AA | 83-848 |
| B. Barron Broadcasting Inc. | Natchitoches, La. | BPH-820806AE | 83-849 |
| C. William W. Brown | Natchitoches, La. | BPH-820824AH | 83-850 |
| D. Juniper Olyen Trice and Sharon Wesley, d.b.a. Black Star Broadcasting Company. | Natchitoches, La. | BPH-820825BE | 83-851 |
| E. Sonrose Rutledge, Jr. | Natchitoches, La. | BPH-820825BK | 83-852 |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

| Issue heading | Applicant(s) |
|-------------------|-------------------|
| 1. (See Appendix) | C and D. |
| 2. Air Hazard | A and D. |
| 3. Comparative | A, B, C, D and E. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,
Chief, Audio Service Division, Mass Media Bureau.

[FR Doc. 83-23770 Filed 8-29-83; 8:45 am]
BILLING CODE 6712-01-M

[File No. BPH-820223 AA; MM Docket No. 83-848 et al.]

Applications for Consolidated Hearing: Fox Com, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Issue heading | Applicant(s) |
|---------------|-------------------|
| 4. Ultimate | A, B, C, D and E. |

| Applicant | City/State | File No. | MM Docket No. |
|------------------------------------|-------------------|--------------|---------------|
| A. Greater Peninsula Media, Inc. | Manistique, Mich. | BPH-810825AF | 83-853 |
| B. Mighty-Mac Broadcasting Company | Manistique, Mich. | BPH-820415BK | 83-854 |
| C. American Peakes, Ltd. | Gulliver, Mich. | BPH-820415AQ | 83-855 |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephoned request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

Appendix—Issue(s)

1. If a final environmental impact statement is issued with respect to C (Brown) or D (Black Star) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 83-23762 Filed 8-29-83; 8:45 am]
BILLING CODE 6712-01-M

[File No. BPH-810825AF; MM Docket No. 83-853 et al.]

Applications for Consolidated Hearing: Greater Peninsula Media, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---------------------------|-----------------|
| 1. (See Appendix) | A. |
| 2. (See Appendix) | B. |
| 3. 307 (b) | All applicants. |
| 4. Contingent comparative | All applicants. |

| Issue heading | Applicant(s) |
|---------------|-----------------|
| 5. Ultimate | All applicants. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

APPENDIX—Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,¹ the applicant(s) is financially qualified: A (Greater)

2. If a final environmental impact statement is issued with respect to B (Mighty-Mac) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1303-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 83-23761 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-82033 IAH; MM Docket No. 83-843 et al.]

Application for Consolidated Hearing; Ruarch Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

¹ Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

| Applicant(s) | Deficiency(s) |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A (Greater) | Applicant requires \$375,168 for the first 3 months operation and construction costs. It has not submitted any documentation that this amount is available. |

| Applicant | City/State | File No. | MM Docket No. |
|-------------------------------------------------------------------------|----------------|--------------|---------------|
| A. Arthur D. Stamler and Virginia I. Stamler, d.b.a. Ruarch Associates. | Woodstock, Va. | BPH-82033IAH | 83-843 |
| B. Woodstock Broadcasting, Inc. | Woodstock, Va. | BPH-820907AE | 83-844 |
| C. All Kountry Music Broadcasters, a partnership | Edinburg, Va. | BPH-820908AH | 83-845 |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---------------------------|-----------------|
| 1. Air Hazard | C. |
| 2. 307(b) | All applicants. |
| 3. Contingent Comparative | All applicants. |
| 4. Ultimate | All applicants. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 83-23763 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee) Main Committee Meeting

September 15-16, 1983.¹

CHAIRMAN: S. E. Doyle (916) 355-6941.

TIME: 9:30 A.M.-4:00 P.M.

¹ Meeting will reconvene on Friday, September 16, 1983, at 9:30 A.M. until Noon, same location, if required. If necessary to reconvene, Friday's agenda will be: Continuation of Work Status Review.

LOCATION: Federal Communications Commission, 1200 19th Street, N.W., Room 330, Washington, D.C. 20554.

AGENDA:

(1) Adoption of the Agenda.
(2) Review and Adoption of Minutes of Sixth Meeting.
(3) Briefing on Highlights of the RARC-83.

(4) Work Status Reports from Chairmen of Working Groups.

A—Services, Facilities & U.S. Interests—W. R. Schnicke

B—Political, Institutional & International Considerations—R. F. Stowe

C—Available U.S. Options & Strategies—Perry Acherman

D—Economic Analysis—Kirit Patel

(5) Report on the CCG (Tony Rutkowski). Lunch—12 Noon-1:00 P.M.

(6) Introduction and Background of the Draft Report.

(7) Other Business.

Dated: August 25, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-23765 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Income and Other Accounts Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act [Pub. L. 92-463], notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's (TIAG) Income and Other Accounts Subcommittee scheduled for Tuesday and Wednesday, September 13 and 14, 1983. The meeting will begin on September 13 at 9:30 a.m. in the offices of Satellite Business Systems (9th Floor Executive Briefing Room), 8283 Greensboro Drive, McLean, Virginia, 22102, and will be open to the public. The agenda is as follows:

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation or Oral Statements
V. Adjournment

With prior approval of Subcommittee Chairman Glenn L. Griffin, oral statements, while not favored or encouraged, may be allowed at the

meeting if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Griffin (214/659-3484) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-23767 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Expense Accounts Subcommittee Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's (TIAG) Expense Accounts Subcommittee scheduled to meet on September 22 and 23, 1983. The meeting will begin at 1:00 p.m. on September 22 and will be open to the public. The meeting location is: Charmaine La May, Best Western Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada 89502. Phone (702) 348-6370.

The agenda is as follows:

- I. General Administrative Matters
- II. Discussion of Assignments
- III. Other Business
- IV. Presentation of Oral Statements
- V. Adjournment

With prior approval of Subcommittee Chairman John Howes, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of a Subcommittee and wishing to make an oral presentation should contact Mr. Howes (212/393-4029) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-23766 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

Meeting of (TIAG) Telecommunications Industry Advisory Group; Auditing and Regulatory Subcommittee

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a two day meeting of the Telecommunications Industry Advisory

Group's (TIAG) Auditing and Regulatory Subcommittee scheduled to meet on Thursday, September 22, 1983 and Friday, September 23, 1983. The meeting will begin at 10:00 a.m. in conference Room A, 10th Floor of the AT&T offices located at 1120-20th Street, N.W., Washington, D.C. The meeting will be open to the public. The agenda is as follows:

- I. General Administrative Matters
- II. Pending and Deferred Issues
- III. Other Business
- IV. Presentation of Oral Statements
- V. Adjournment

With prior approval of Subcommittee Chairman Hugh A. Gower, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of a Subcommittee and wishing to make an oral presentation should contact Mr. Gower (404/658-1776) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-23768 Filed 8-29-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1983-22]

Rulemaking Petition; Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notice of Availability.

SUMMARY: On July 26, 1983, The National Taxpayers Legal Fund filed a Petition for Rulemaking with the Commission. The petition is available for public inspection in the Commission's Public Records Office. Statements in support of or in opposition to the petition must be filed on or before September 29, 1983.

DATE: Comments must be received on or before September 29, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Rulemaking Petition: Notice of Availability

On July 26, 1983, The National Taxpayers Legal Fund (NTLF) filed a Petition for Rulemaking with the Federal Election Commission. Petitioner seeks promulgation of a rule to amend

Subchapter E, Title 11 CFR relating to the Presidential Election Campaign Fund.

Specifically, NTLF requests that the Commission amend Section 9002.15 of its regulations, defining the term "political party," to provide additional requirements to be met by any organization in order to qualify as a political party for purposes of the Presidential Election Campaign Fund Act (26 U.S.C. 9001, *et seq.*).

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 1325 K Street, NW, Washington, D.C. 20463, between the hours of 9:00 a.m. and 5:00 p.m.

Statements in support of or in opposition to the Petition for Rulemaking must be filed with the Commission 30 days after the publication.

Dated: August 24, 1983.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 83-23834 Filed 8-29-83; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 24, 1983.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Ch. 35]. Department and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB is carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in

the Federal Register. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

Request for extension of two related reports

1. Report title: Annual dealer Reports of Condition.

Agency form number: FR 2002, FR 2003
Frequency: Annual

Reporters: Bank and nonbank government security dealers

SIC Code: 641

Small businesses are affected.

General description of report:

Respondent's obligation to reply is required to obtain or retain a benefit; [12 U.S.C. § 248(a)]; a pledge of confidentiality is promised [5 U.S.C. § 552(b)(4)].

Reports provide detailed balance sheet and income and expense information for government securities dealers used by the Federal Reserve and the Treasury to monitor financial developments in the government securities market for supervisory, regulatory and monetary policy purposes.

Request for extension of existing report

1. Report title: OTC Margin Stock Report.

Agency form number: FR 2048

Frequency: Annual; three times per year

Reporters: Industrial and insurance companies, banks, bank holding companies, savings and loan associations, and other financial institutions.

SIC Code: 602, 612, 615, 631, 635, 636, 639, 672

Small businesses are not affected.

General description of report:

Respondent's obligation to reply is voluntary [15 U.S.C. 78g and 78w]; a pledge of confidentiality is not promised.

This report is used to gather information on certain corporations which have stock trading over-the-counter and that are being considered for inclusion on the Board's List of OTC Margin Stocks.

Request for approval with revisions

1. Report title: Monthly Survey of Selected Deposits and Other Accounts.

Agency form number: FR 2042

Frequency: Monthly

Reporters: Sample of insured commercial banks and mutual savings banks

SIC Code: 602, 603

Small businesses are affected

General description of report:

Respondent's obligation to respond is voluntary [12 U.S.C. § 248(a)]; a pledge of confidentiality is promised [5 U.S.C. § 552(b)(8)].

These data are used by the Federal reserve (1) to analyze and interpret movements in the monetary aggregates, (2) to observe competitive developments between banks and thrift institutions, and (3) to help monitor the earnings position of depository institutions.

Board of Governors of the Federal Reserve System, August 24, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-23726 Filed 8-29-83; 8:45 am]

BILLING CODE 5210-01-M

First Northwest Bancorporation, and LaBelle Bancshares, Inc., Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated

for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Northwest Bancorporation*, Seattle, Washington; to acquire 100 percent of the voting shares or assets of Cascade Security Bank, Enumclaw, Washington. Comments on this application must be received not later than September 23, 1983.

B. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *LaBelle Bancshares, Inc.*, LaBelle, Missouri; to acquire 100 percent of the voting shares or assets of North Missouri Bancorp, Inc., LaBelle, Missouri. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Comments on this application must be received not later than September 23, 1983.

Board of Governors of the Federal Reserve System, August 24, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-23727 Filed 8-29-83; 8:45 am]

BILLING CODE 6210-01-M

Florida Central Banks, Inc., and North Missouri Bancorp., Inc.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that request a hearing must include a statement of why a written presentation

would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Florida Central Banks, Inc.*, Chipley, Florida; to become a bank holding company by acquiring at least 97 percent of the voting shares of Bank of Washington County, Chipley, Florida. Comments on this application must be received not later than September 23, 1983.

B. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *North Missouri Bancorp, Inc.*, LaBelle, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Citizens Bank of Edina, Edina, Missouri. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Comments on this application must be received not later than September 23, 1983.

Board of Governors of the Federal Reserve System, August 24, 1983.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 83-23728 Filed 8-29-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F-0264]

Rhone-Poulenc, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rhone-Poulenc, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of stearoylbenzoylmethane as a stabilizer for polyvinyl chloride polymers in contact with food containing up to 50 percent alcohol.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic

Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3B3733) has been filed by Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017, proposing that the food additive regulations be amended to provide for the safe use of stearoylbenzoylmethane as a stabilizer for polyvinyl chloride polymers in contact with food containing up to 50 percent alcohol.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: August 18, 1983.

Richard J. Ronk,

Acting Director Bureau of Foods.

[FR Doc. 83-23710 Filed 8-29-83; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health *

Arthritis, Diabetes, and Digestive and Kidney Diseases National Advisory Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on September 20 and 21, 1983 in Conference Room 10, Building 31A, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on September 20 from 8:30 a.m. to 1:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

Meeting of the full Council and its subcommittees will be closed to the public as indicated below in accordance with provisions set forth in Sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on September 20,

1983, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on September 21, from 8:30 a.m. to adjournment.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Acting Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesda, Maryland 20205, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A46, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5765.

(Catalog of Federal Domestic Assistance Program No. 13.846-849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 11, 1983.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 83-23734 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 5, 1983, Building 31, Conference Room 7 Bethesda, Maryland 20205. This meeting will be open to the public from 9:30 a.m. to 10:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 5, from 10:00 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, The Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7153) will furnish substantive program information.

Dated: August 12, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-23731 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Blood Disease and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Disease and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 17-19, 1983, National Institute of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The Committee will meet in Building 31, Conference Room 9, C Wing, October 17-18, and in Conference Room 4, A Wing, on October 19.

The entire meeting will be open to the public from 9:00 AM to approximately 10:00 PM, October 17-18, and from 8:30 AM to adjournment October 19, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institute of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institute of Health, Bethesda, Maryland 20205, phone (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Disease and

Resources Research, National Institutes of Health)

Dated: August 24, 1983.

Thomas E. Malone, Ph.D.,

Deputy Director, National Institutes of Health.

[FR Doc. 83-23729 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Board of Scientific Counselors Division of Cancer Cause and Prevention; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Cause and Prevention on September 14-15, 1983, Shannon Building (Bldg. 1), Wilson Hall, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The meeting will be open to the public from approximately 1:00 p.m. to recess on September 14, and from 9:00 a.m. to adjournment on September 15, for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

The Board of Scientific Counselors meeting will be closed to the public from 9:00 a.m. to approximately 12:00 NOON on September 14, 1983, in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Cause and Prevention. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Cause and Prevention, National Cancer Institute, Building 31, Room 11A04, National Institutes of Health, Bethesda, Maryland 20205 (301/496-6927) will furnish substantive program information.

Dated: August 12, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-23735 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Communicative Disorders Review Committee; Meeting

Pursuant to the Pub. L. 92-463, notice is hereby given of the meeting of the Communicative Disorders Review Committee, National Institute of Neurological and Communicative Disorders and Stroke, November 4, 5, 1983, in the Gloucester Room of the Boston Park Plaza Hotel and Towers, 50 Park Plaza, Boston, Massachusetts 02117.

The meeting will be open to the public from 8:30 a.m. until 9:30 a.m. on November 4, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4), and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 4 from 9:30 a.m. to adjournment on November 5, for the review, discussion and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Sylvia Shaffer, Chief, Office of Scientific and Health Reports, Building 31, Room 8A03, NIH, NINCDS, Bethesda, Maryland 20205, telephone (301) 496-5751, will furnish summaries of the meeting and roster of committee members.

Dr. Marilyn Semmes, Executive Secretary, NINCDS, NIH, Federal Building, Room 9C14, Bethesda, Maryland, telephone (301) 496-9223, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 11, 1983

Betty J. Beveridge,

Committee Management Officer, National Institute of Health

[FR Doc. 83-23733 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, October 27-28, 1983, Building 31, Conference Room 10, Bethesda, Maryland 20205. This meeting will be open to the public on October 27, from 9:00 A.M. to 10:00 A.M. This will be the first meeting of the Committee and time will be spent to discuss organizational matters and administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 27, from 10:00 A.M. to 5:00 P.M.; and on October 28, from 9:00 A.M. to adjournment for the review, discussion and evaluation of individual contract purposes. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5706) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 826, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7575) will provide program information.

Dated: August 12, 1983.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-23730 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Neurological Disorders Program—Project Review B Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Neurological Disorders Program—Project Review B Committee, National Institute of Neurological and Communicative Disorders and Stroke, November 4, 5 and 6, 1983, at the Boston

Back Bay Hilton Hotel, 575 Commonwealth Avenue, Boston, Massachusetts 02215.

The meeting will be open to the public from 8:30 p.m. until 9:00 p.m. on November 4, 1983, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4), and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 4th from 9:00 p.m. to adjournment on November 6th for the review, discussion and evaluation of individual grant applications.

The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Sylvia Shaffer, Chief, Office of Scientific and Health Reports, Building 31, Room 8A03, NIH NINCDS, Bethesda, MD 20205, telephone (301) 496-5751, will furnish summaries of the meeting and the roster of committee members.

Dr. Ellen G. Archer, Executive Secretary, Federal Building, Room 9C10B, Bethesda, MD 20205, telephone (301) 496-9223, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 11, 1983

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-23732 Filed 8-29-83; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Public Health Service, HHS.

ACTION: Waiver of advance notice period for a new system of records, and addition of a proposed new routine use.

SUMMARY: FR Doc. 83-18581, appearing at page 31738 in the issue of Monday, July 11, 1983, provided notification of a new system of records proposed by the Health Resources and Services Administration (HRSA). That system is 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA." The

document stated that the Public Health Service had requested that the Office of Management and Budget (OMB) grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and the Congress.

OMB granted the requested waiver on August 3, 1983. Accordingly, the new system of records, 09-15-0045, became effective upon the date of the waiver except for the routine uses established for the system. They became effective August 11, 1983, following the public comment period.

However, in response to a comment received from the responsible oversight committee of the U.S. House of Representatives, we are adding a routine use to permit disclosure of information from these records to the General Accounting Office (GAO) and OMB for auditing financial obligations. We are also modifying one of the existing routine uses. PHS invites interested parties to submit comments on the proposed new routine use on or before September 29, 1983.

In accordance with the Debt Collection Act of 1982 (Pub. L. 97-365), we are also adding the "special disclosure" statement. This statement does not require a public comment period.

DATE: PHS will adopt the new routine use without further notice on or before September 29, 1983, unless comments are received which would result in a contrary determination.

ADDRESS: Please address comments to: HRSA Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A-20, 5600 Fishers Lane, Rockville, MD 20857.

We will make comments available for public inspection at the above address during normal business hours, 8:30 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT:

Ms. Sandra L. Perry, Privacy Act Coordinator, Health Resources and Services Administration, Parklawn Building, Room 14A-20, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-3780. This is not a toll free number.

SUPPLEMENTARY INFORMATION: HRSA established this system of records to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by HRSA. The system, which became effective on August 3, is maintained to

reduced the amount of outstanding debts owed to the Federal Government.

In response to a comment received from the responsible oversight committee of the U.S. House of Representatives, we are modifying the fourth routine use. The comment objected to the inclusion of GAO and OMB in the same routine use with the Department of Justice and State agencies on the grounds that, although these agencies are involved in identifying potential violations of law, they are not directly involved with the law enforcement purpose as stated in this routine use.

We are therefore deleting the reference to GAO and OMB from the fourth routine use which relates to disclosures to agencies charged with law enforcement, and are proposing to establish a new routine use to provide for the disclosure of information to GAO and OMB for the purpose of auditing financial obligations owed to the Federal Government under HRSA-administered programs.

The proposed new routine use #6 will read as follow:

"Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions."

Following the Routine Uses section, in accordance with the Debt Collection Act of 1982 (Pub. L. 97-365) and OMB guidance, we are also adding, as a separate section, the "special disclosure" statement which will allow HRSA to disclose information to consumer reporting agencies to aid in the collection of debts owed to the Federal Government. The disclosure will consist of the individual's name, Social Security number, and other information necessary to establish the identity of the individual and nature of the claim.

The system notice, which was last published as stated above, is republished in its entirety below to incorporate the proposed changes.

Dated: August 18, 1983.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, Public Health Service.

09-15-0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.

SYSTEM LOCATION:

Division of Fiscal Services, Office of the Administrator, HRSA, Parklawn Building, Room 16-05, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions, HRSA, Parklawn Building, Room 6-05, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service, HRSA, Parklawn Building, Room 6A-23, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance, HRSA, Parklawn Building, Room 7-05, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20405.

Division of Computer Research and Technology, NIH Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received student loans, scholarship, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs. The individuals covered by this system include health professionals and students in various health professions: physicians, dentists, pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, medical technologists, chiropractors, clinical psychologists, and other health personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains loan repayment status, amounts of student indebtedness, schools of attendance of borrowers, lending institutions of borrowers, tax identification numbers (Social Security numbers), and demographic information pertaining to borrowers funded by HRSA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subpart II, Part D, Title III of the Public Health Service Act, as amended (42 U.S.C. 254d-294y), National Health Service Corps Program which includes the Indian Health Scholarship Program;

Subpart I, Part C, Title VII of the Public Health Service Act, as amended (42 U.S.C. 294-294f), Federal Program of Insured Loans to Graduate Students in Health Professions Schools;

Subpart II, Part C, Title VII of the Public Health Service Act, as amended (42 U.S.C. 294m-294q), Health Professions Student Loans;

Section 822 of the Public Health Service Act, as amended (42 U.S.C. 296m), Nurse Practitioner Programs;

Section 830 of the Public Health Service Act, as amended (42 U.S.C. 297), Traineeships for Advanced Training of Professional Nurses;

Subpart II, Part B, Title VIII of the Public Health Service Act, as amended (42 U.S.C. 297a-297h), Nursing Student Loans;

Health Professions Educational Assistance Act of 1976, Pub. L. 94-484 Section 409(b) (42 U.S.C. 295g);

Migration and Refugee Assistance Act of 1962, Pub. L. 87-510 (22 U.S.C. 2601);

Indian Health Care Improvement Act, Pub. L. 94-437, as amended (25 U.S.C. 1601 *et seq.*); and

Debt Collection Act of 1982, Pub. L. 97-365 (5 U.S.C. 5514 note).

PURPOSE(S):

The purpose of the system is to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by the Health Resources and Services Administration (HRSA). This system is maintained to reduce the amount of outstanding debts owed to the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. Records may be disclosed to other Federal agencies where an applicant for employment, or a current employee of that agency is delinquent in repaying his/her Federal financial obligation. The purpose of this disclosure is to enlist the agency's cooperation in facilitating repayment.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued

pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, such as the Department of Justice and State agencies charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

5. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to provide an effective defense.

6. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government. Disclosure of records will consist of the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, and electronic word processing diskettes.

RETRIEVABILITY:

Records are retrievable by name, Social Security number (SSN), award number, and by school of attendance.

SAFEGUARDS:

1. *Authorized Users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HRSA-funded programs.

2. *Physical Safeguards:* File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural Safeguards:* Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office.

The safeguards described above were established in accordance with DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual; and the DHHS ADP Systems Manual Part 6, "ANP System Security."

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under "System Location" for two years after completion of the repayment of the loan. The records are then sent to the Federal Records Center for a four-year retention period, and are subsequently disposed of in accordance with the HRSA Records Control Schedule. The records control schedule and disposal standards for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Operations and Management, Health Resources and Services Administration, Parklawn Building, Room 14A-03, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you, contact the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with

current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of record concerning an individual under false pretenses is a criminal offense subject to a \$5,000 fine. In addition, the following information is needed: (1) The name of the student assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

In addition, be informed that provision of the SSN may assist in the verification of your identity as well as the identification of your record. Providing your SSN is voluntary and you will not be refused access to your record for failure to disclose your SSN.

Request by mail: Written request must contain the name and address of the requester, his/her date of birth, and his/her signature which is either notarized to verify his/her identity or a written certification that the requester is who he/she claims to be and understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a \$5,000 fine. In addition, the following information is needed: (1) The name of the student assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

In addition, be informed that provision of the SSN may assist in the verification of your identity as well as the identification of your record. Providing your SSN is voluntary and you will not be refused access to your record for failure to disclose your SSN.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information you want to

confest, and state the corrective action sought, with supporting justification.

CONTESTING SOURCE CATEGORIES:

Individuals whose records are contained in the system; Federal organizations including but not limited to the Office of Inspector General/DHHS, and the Office of the Administrator, the Bureau of Health Professions, the Indian Health Service, and the Bureau of Health Care Delivery and Assistance—all of which administer HRSA-funded programs; participating schools; and lending institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-23723 Filed 8-29-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

Blue Ridge Parkway and Pisgah National Forest, North Carolina; Joint Order Transferring Administrative Jurisdiction of Department of the Interior Lands and National Forest Lands.

By virtue of the authority vested in the Secretary of the Interior and in the Secretary of Agriculture by the Act of June 8, 1940, which amended the Act of June 30, 1936 (16 U.S.C. 460a-1) and the Act of May 13, 1952 (16 U.S.C. 460a-4), it is ordered as follows:

(1) The lands, described at Tract P-164, under the jurisdiction of the Department of the Interior, which lands are within the exterior boundaries of the Pisgah National Forest, in Burke and McDowell Counties, North Carolina, are hereby transferred from the jurisdiction of the Secretary of the Interior to the jurisdiction of the Forest Service, Department of Agriculture, subject to outstanding rights or interests of record. Pursuant to the Act of May 13, 1952, the Department of the Interior lands transferred to the Department of Agriculture shall become National Forest lands subject to all laws, rules, and regulations applicable to lands acquired pursuant to the Weeks Law of March 1, 1911 (36 Stat. 961), as amended.

(2) The National Forest lands described as Tract P-163, which are a part of the Pisgah National Forest, Burke County, North Carolina, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Interior subject to outstanding rights or interests of record. Pursuant to the Act of June 8, 1940, which amended the Act

of June 30, 1936, the National Forest lands transferred to the Department of the Interior shall be administered as part of the Blue Ridge Parkway.

Dated: June 3, 1983.

John R. Block,

Secretary of Agriculture.

Dated: August 10, 1983.

James G. Watt,

Secretary of the Interior.

United States Department of Interior; Park Service Tract P-164

All that certain tract or parcel of land lying or being in Burke County, North Carolina, situated approximately one and one-half (1.5) mile southeast of Linville Falls Community on the waters of Linville River, more particularly described as follows:

Beginning at corner 1, which is corner LR15 of the National Park Service Hossfeld Heirs tract, and the beginning corner of Parcel IIIA in the deed recorded in Burke County Deed Book 112, page 474, a point in the center of State Road #105 witnessed by the following bearing trees: 1) a 16" water oak bears S.63°58'W., 11.4 feet; 2) a 24" white oak bears N.64°24'W., 25.7 feet.

Thence, with three (3) lines of the former Hossfeld Heirs tract:

(1) *South 86°55' east, 551.30 feet to corner 2, LR 16.*

(2) *North 03°05' east, 247.50 feet to corner 3, LR 17.*

(3) *South 87°57' east, approximately 630 feet to corner 4, a point in the line between LR 17 and LR 17.1.*

Thence, with four (4) severance lines through lands administered by the National Park Service:

(1) *South, approximately 1,700 feet to corner 5, a point.*

(2) *East, approximately 2,050 feet to corner 6, a point in the center of the Linville River.*

(3) Thence, with the centerline of the river in a northerly direction to corner 7, a point in the center of said river opposite the mouth of Gulf Branch.

(4) Thence, leaving the river and running with the center of Gulf Branch in a northerly direction to corner 8, a point in the line from corner 48 to 49 of the United States Packer and Harrison Tract 30, also corner 8 of Tract 163.

Thence with two (2) lines of said tract:

(1) *South 89°39' east, approximately 988 feet to corner 9, which is corner 48 of the Packer and Harrison tract, a large painted stone marked "M" and witnessed by the following described bearing trees scribed "9H68": 1) an 8" chestnut oak bears N.57°W., 0.21 chain; 2) a 30" pine bears N.32°E., 0.07 chain.*

(2) *South 01°04' west, approximately 2,303 feet to corner 10, point X, a point on top of Long Arm Ridge between corners 47 and 48 of Tract 30.*

Thence, running with the top of Long Arm Ridge in a westerly direction, crossing the Linville River at approximately 3,700 feet from point X, a total distance of approximately 4,500 feet to point Y, a point in

the centerline of Kistler Memorial Highway (S.R. 105) at the intersection of said ridge.

Thence, leaving the ridge and running with the road in a northerly direction approximately 3,200 feet to LR 15, *THE POINT OF BEGINNING*, containing 211.0 acres, be the same more or less, and being a portion of U.S. Park Service Tract 46-108 described in Blue Ridge Parkway Deed No. 55.

[FR Doc. 83-23781 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Commission on Fair Market Value; Policy for Federal Coal Leasing; Meeting

AGENCY: Department of the Interior.

ACTION: Notice of Second and Third Meetings of the Commission.

SUMMARY: Notice is hereby given that the second and third meetings of the Commission on Fair Market Value Policy for Federal Coal Leasing will be September 6 and 7, and September 28 and 29, respectively. The meeting on September 6 and 7 will be in room 138 of the Dirksen Senate Office Building in Washington, D.C. The meeting for September 28 and 29 will be in Washington, D.C., at a place to be announced later. All meetings will convene at 9:00 a.m. and adjourn at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

F. Scott Bush, Executive Director, Commission on Fair Market Value Policy for Federal Coal Leasing, Suite 400, 1015 20th Street, N.W., Washington, D.C. 20036. Phone: (202) 632-6501.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to the authority and requirements of Pub. L. 98-63, approved July 30, 1983, making supplemental appropriations for fiscal year 1983, and for other purposes, and in accordance with the Federal Advisory Committee Act (Pub. L. 92-463).

The Commission on Fair Market Value Policy for Federal Coal Leasing will hold its second meeting on Tuesday and Wednesday, September 6 and 7, 1983, in the Dirksen Senate Office Building, Constitution Ave., N.E., Washington, D.C. The meeting agenda is as follows:

Day 1

9:00 a.m.-10:00 a.m., business meeting
10:00 a.m.-5:00 p.m., presentations by General Accounting Office and Department of the Interior on 1982 Powder River sale and response to questions from the Commission

Day 2

Witnesses representing consumers, environmental groups, industry, users and others

The third meeting of the Commission will be Monday and Tuesday, September 26 and 27 in Washington, D.C., at a place to be announced later. The meeting agenda will be to begin with a brief business meeting, followed by the taking of testimony for the remainder of the time the Commission is in session. The meetings will begin at 9:00 a.m. and conclude at 5:00 p.m.

There will be two further meetings of the Commission. The first, in Denver, Colorado, in October, will be specifically to take public comment on fair market value policy and procedures for federal coal leasing from those persons located in the Western coal regions. The fourth meeting, probably in mid-November, will be used to review the draft recommendations of the Commission.

All witnesses will be formally invited to speak by the Commission. Persons who wish to testify on coal fair market value before the Commission at any of these meetings may make themselves known to the Chairman through the Commission staff. The Commission invites written testimony at any time. Witnesses at meetings are requested to submit 10 copies of written testimony or summaries 5 days in advance of their appearance and to make available 75 copies at the meeting. Witnesses will be sworn and all testimony recorded and transcribed.

The six month deadline by which the law requires the Commission to produce recommendations requires that the Commission operate on an expedited schedule. In addition, the schedules of the Commissioners allowed only these two possible dates in September when the Commissioners could all be present. Because of these exceptional circumstances, the usual 15 day notice of an advisory committee meeting provided for by 41 CFR 107-6.1015(b) has been waived for the first of these two meetings.

The Commission was established by charter signed August 4, 1983, by the Secretary of the Interior, and is reviewing the Department's coal leasing statutes, policies, and procedures to ensure receipt of fair market value for Federal coal leases. To complete its mission, the Commission will:

- Examine the current statutes, policies, and procedures to ensure receipt of fair market value for Federal coal leases;
- Evaluate efforts to improve the Department's program; and

c. Recommend improvements in those statutes, policies, and procedures.

Dated: August 26, 1983.

Richard R. Hite,

Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior.

[FR Doc. 83-23951 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-10-M

Fish and Wildlife Service

Endangered Species Permit; Gibbon & Gallinaceous Bird Center et al.; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicant: Gibbon & Gallinaceous Bird Center, Saugus, CA; PRT 2-10907.

The applicant requests a permit to purchase in foreign commerce and import one female agile gibbon (*Hylobates agilis*) from Valley Zoo, Edmonton, Canada for enhancement of propagation.

Applicant: Knoxville Zoological Park, Knoxville, TN; PRT 2-10914.

The applicant requests a permit to import one captive-born male Asiatic lion (*Panthera leo persica*) from Tierpark Berlin, Berlin, German Democratic Republic, for enhancement of propagation.

Applicant: David L. Bechler—Lamar University, Beaumont, TX; PRT 2-10935.

The applicant requests a permit to take specimens of the Texas blind salamander (*Typhlomolge rathbuni*) for scientific purposes.

Applicant: San Francisco Zoo, San Francisco, CA; PRT 2-10941.

The applicant requests a permit to import two captive-born female mandrills (*Papio sphinx*) from the Singapore Zoological Garden, Singapore, for enhancement of propagation.

Applicant: Walter B. Sturgeon, Jr., Durham, NH; PRT 2-10921.

The applicant requests a permit to export six captive-born nene geese (*Branta sandvicensis*) to the Provincial Wildlife Park, Nova Scotia, Canada, for enhancement of propagation.

Applicant: Cheyenne Mountain Zoological Park, Colorado Springs, CO; PRT 2-10963.

The applicant requests a permit to import one captive-born male black rhinoceros (*Diceros bicornis*) from the

Hiroshima Ada Zoological Park, Japan for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested person may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: August 26, 1983

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-23799 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Oregon; Burns District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Burns District Advisory Council

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Burns District Advisory Council

DATES: Meeting will be held Sept. 26-27, 1983.

ADDRESS: Meeting Sept. 26, 1983, will be at Harney County Courthouse, Burns, Oregon.

The tour on July 27, 1983 leaves and returns to Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Josh Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alford Street, Burns, Oregon 97720, (503) 573-5241.

SUPPLEMENTARY INFORMATION: This meeting will combine a tour of BLM's Steens Mountain Recreational Area to look at some of the specific issues and the regular District Advisory Council meeting.

The agenda for the Sept. 26, 1983 meeting, which will begin at 10:00 a.m., in the County Courthouse and close about 4:00 p.m., is:

- Organizational Items—appointment of chairman
- Cooperative Management Agreement (CMA)—nominations of rangeland users
- Steens Mountain Recreation Management Plan

**Public Comment Period
Arrangements for Next Meeting**

The tour will leave at 9:00 a.m., Sept. 27, 1983 from the Burns District office and return about 5:00 p.m. This is open to the public, but the BLM will not provide transportation.

Josh Warburton,
Burns District Manager.
[FR Doc. 83-23720 Filed 8-29-83; 8:45 am]
BILLING CODE 4310-84-M

[A-17000-D]

Arizona; Opening of Public Lands

August 22, 1983.

1. In *Federal Register* Volume 46, Number 148, Pages 39479-39480 dated August 3, 1981, approximately 12,837 acres were proposed as suitable for classification for transfer to the State of Arizona under the State Indemnity Selection Program. All of the lands have been transferred to the State of Arizona with the exception of 60.00 acres, which have been deleted from the State's application and are described as follows:

T. 7 N., R. 4 W. G&SRM
Section 33; S½SE¼NE¼, NE¼SE¼.

The areas described aggregate about 60.00 acres in Maricopa County.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on February 24, 1982.

Appropriation of lands under the general mining laws between April 7, 1944 and February 24, 1982 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the

Interior, 2400 Valley Bank Center,
Phoenix, Arizona 85073 (602-261-4774).

Mildred C. Kozlow,
Acting Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 83-23710 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

**Oil and Gas and Sulphur Operations in
the Outer Continental Shelf; Huffco
Petroleum Corp.**

AGENCY: Minerals Management Service,
U.S. Department of the Interior.

ACTION: Notice of the Receipt of a
Proposed Development and Production
Plan.

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 2306, Block 261, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 23, 1983.

John L. Rankin,
Regional Manager, Gulf of Mexico OCS
Region.

[FR Doc. 83-23717 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-MR-M

**Oil and Gas and Sulphur Operations in
the Outer Continental Shelf; Shell
Offshore Inc.**

AGENCY: Minerals Management Service,
U.S. Department of the Interior.

ACTION: Notice of the Receipt of a
Proposed Development and Production
Plan.

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1194, Block 58, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 23, 1983.

John L. Rankin,
Regional Manager, Gulf of Mexico OCS
Region.

[FR Doc. 83-23718 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

**National Register of Historic Places;
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 19, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the

National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 14, 1983.

Carol D. Shull,
Chief of Registration, National Register.

CALIFORNIA

Alameda County

Oakland, *Oakland City Hall*, 1421 Washington St.

Del Norte County

Crescent City, *Crescent City Lighthouse*, A St., Battery Point Island

Fresno County

Fresno, *Brix, H.H., Mansion*, 2844 Fresno St.

Humboldt County

Garberville, *Benbow Inn (Hotel Benbow)*, 445 Lake Benbow Dr.

Los Angeles County

Avalon, *Gano, Peter, House*, 718 Crescent Ave.

Hollywood, *Toberman, C.E., Estate*, 1847 Camino Palmero

Pasadena, *Old Pasadena Historic District*, Roughly bounded by Pasadena, Fair Oaks, Raymond Aves., Arroyo Pkwy., Del Mar Blvd., and Corson St.

Merced County

Merced, *Cook, Maj. George Beecher, House*, 356 W. 21st St.

Monterey County

Gonzales, *Community Church of Gonzales*, 301 4th St.

Orange County

Fullerton, *Elephant Packing House*, 201 W. Truslow Ave.

Sacramento County

Sacramento, *Old Traven*, 2801 Capitol Ave.

San Diego County

San Diego, *Coulter House*, 3162 2nd Ave.

San Diego, *Park Place Methodist Episcopal Church South*, 508 Olive St.

San Diego, *Temple Beth Israel*, Heritage Park—Juan and Harney Sts.

San Francisco County

San Francisco, *Liberty Street Historic District*, Roughly 15—188 Liberty St.

San Francisco, *McMullen, John, House*, 827 Guerrero St.

COLORADO

Denver County

Denver, *Haskell House*, 1651 Emerson St.

Summit County

Frisco, *Frisco Schoolhouse*, 120 Main St.

DISTRICT OF COLUMBIA

Washington, *Bond Building*, 1404 New York Ave., NW

Washington, *Moran Building*, 501-509 G St., NW

Washington, *Prince Hall Masonic Temple*, 1000 U St., NW

Washington, *Wyoming Apartments*, 2022 Columbia Rd., NW

IDAHO

Jerome County

Jerome vicinity, *Doughty, George V., House (Lava Rock Structures in South Central Idaho TR)*, NE of Jerome

Lincoln County

Shoshone, *Pardum Livery Stable (Lava Rock Structures in South Central Idaho TR)*, 113 N. Rail St. E.

INDIANA

LaPorte County

LaPorte, *Downtown LaPorte Historic District*, Roughly bounded by State, Jackson, Maple and Chicago Sts.

KENTUCKY

Fayette County

Lexington, *North Broadway-Short Historic District*, N. Broadway and W. Short St.

LOUISIANA

Assumption Parish

Labadieville, *St. Philomene Catholic Church and Rectory*, LA 1

Rapides Parish

Pineville, *Rose Cottage*, Azalea St., [Central Louisiana State Hospital]

St. Tammany Parish

Mandeville, *Flagsta*, 1815 Lakeshore Dr.

Vernon Parish

Leesville, *Wingate House (Bagents House)*, 800 S. 8th St.

MARYLAND

Allegany County

Lonaconing, *Lonaconing Historic District*, MD 36, MD 657, and Douglas Ave., Church, E. Main and Railroad Sts.

Baltimore (Independent City)

Douglass Place, 516-524 S. Dallas St.

Gallagher Mansion and Outbuilding, 431-435 Notre Dame Lane

Union Square-Hollins Market Historic District, Roughly bounded by Fulton, Fayette, Pratt and Schroder Sts.

Baltimore County

Catonsville, *St. Charles College Historic District*, 711 Maiden Choice Lane

NEW JERSEY

Bergen County

Edgewater, *Ford Motor Company Edgewater Assembly Plant*, 309 River Rd.

NEW MEXICO

Grant County

Silver City, *St. Mary's Academy Historic District*, 1813 N. Alabama St.

NEW YORK

Bronx County

New York, *Morris High School Historic District*, Roughly bounded by Boston Rd.,

Jackson and Forrest Aves., and E. 166th and Home Sts.

New York, *Sunnyslope*, 812 Faile St.

Erie County

Buffalo, *Durham Memorial A.M.E. Zion Church*, 174 E. Eagle St.

Greene County

Red Falls, *Morss Homestead/Federal City Homestead*, NY 23

Jefferson County

Stone Mills, *Irwin Brothers Store*, NY 180

Kings County

New York, *Ditmas Park Historic District*, Bounded by Marlborough Rd., Dorchester, Ocean, and Newkirk Aves.

New York, *New England Congregational Church and Rectory*, 177-179 S. 9th St.

New York, *United States Army Military Ocean Terminal*, 58th-65th St. and 2nd Ave.

Lewis County

Constableville, *Constableville Village Historic District*, Roughly bounded by Sugar River, Main, N. Main, W. Main, Church, High, West, and James Sts.

West Martinsburg, *Methodist Episcopal Church of West Martinsburg*, W. Martinsburg Rd.

Madison County

Oneida, *Main-Broad-Grove Streets Historic District*, Roughly bounded by Main, Broad, E. Grove, W. Grove, Wilbur, Elizabeth, E. Walnut, W. Walnut, and Stone Sts.

Monroe County

Rochester, *Rochester City School #24 (Ellwanger and Barry School)*, Meigs St.

New York County

New York, *Building at 361 Broadway*, 361 Broadway

New York, *Cary Building*, 105-107 Chambers St.

New York, *Grand Hotel*, 1232-1238 Broadway

New York, *IRT Broadway Line Viaduct (Manhattan Valley Viaduct)*, W. 122nd St. to W. 135th St., Broadway

New York, *Lever House*, 390 Park Ave.

New York, *Liberty Tower*, 55 Liberty St.

Onondaga County

Jordan, *Jordan Village Historic District*, Roughly bounded by N. Main, S. Main, Elbridge, Clinton, Hamilton, Lawrence, and Mechanic Sts.

Syracuse, *Walnut Park Historic District*, Walnut Pl. and Walnut Ave.

St. Lawrence County

Clinton, *St. Lawrence University-Old Campus Historic District*, Park St.

Ogdensburg, *Acker and Evans Law Office*, 315 State St.

Tompkins County

Indian Fort Road Site

Washington County

Ft. Edward, *Old Fort House*, 29 Lower Broadway

Hudson Falls, *Hudson Falls Historic District*,
Roughly bounded by Main, Mechanic,
Maple, Oak, River,
Pearl, Cherry and Mulberry Sts., Village Park,
Hudson Pl. and Park Pl.

Westchester County

Armonk, *Smith Tavern*, 400 Bedford Rd.
Elmsford, *Elmsford Reformed Church and
Cemetery*, 30 S. Central Ave.
Port Chester, *Putnam and Mellor Engine and
Hose Company Firehouse*, 48 S. Main St.
Yonkers, *Delavan Terrace Historic District*,
Roughly bound by Delaware Terr. and
Palisade and Park Aves.

OKLAHOMA

Cotton County

Walters, *First United Methodist Church*, 202
E. Oklahoma

Garfield County

Covington vicinity, *Kimmell Barn*, NE of
Covington

Pottawatomie County

Asher vicinity, *Sacred Heart Mission Site*,
Off OK 39

TENNESSEE

Hamblen County

Morristown, *Morristown College Historic
District*, 417 N. James St.

TEXAS

Lamar County

Paris, *Scott-Roden Mansion*, 425 S. Church St.

VERMONT

Orange County

West Newbury, *West Newbury Village
Historic District*, Snake and Tucker Mtn.
Rds.

[FR Doc. 83-23499 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare a Draft Environmental Impact Statement for the Proposed John Henry No. 1 Mine, King County, Washington

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Notice is hereby given that the Office of Surface Mining (OSM), Western Technical Center, intends to prepare an environmental impact statement (EIS) on the permit application submitted by the Pacific Coast Coal Company to OSM for the proposed John Henry No. 1 mine. The EIS will evaluate the alternative actions of approval or disapproval and other alternatives which may be developed

after all comments from the scoping process have been evaluated. This EIS will assist the Department in making a decision on Pacific Coast Coal Company's application for surface mining coal next to the City of Black Diamond, Washington.

DATES: A public scoping meeting was held in Black Diamond, Washington, on July 21, 1983, to obtain public input concerning the proposed mine and to aid in the scoping process. All information obtained at and subsequent to the meeting will be considered in determining the scope of the EIS. Any additional written comments or statements on the scope of the EIS must be received no later than 5 p.m. MDT, September 30, 1983 at the address below.

ADDRESSES: Written comments or statements must be mailed or hand delivered to Allen D. Klein, Administrator, Attn: Charles Albrecht, Office of Surface Mining, Western Technical Center, Second Floor, Brooks Towers, 1020 Fifteenth Street, Denver, CO 80202.

Copies of the mine plan are available for review at the OSM office above as well as at: the Building and Land Development Division, 450 King County Administration Building, Seattle, Washington; and, the OSM Casper Field Office, Freden Building, 935 Pendell Boulevard, Mills, Wyoming.

FOR FURTHER INFORMATION CONTACT: Allen D. Klein, Attn: Charles Albrecht (telephone (303) 837-5421) at the Denver, Colorado, location given under "ADDRESSES."

SUPPLEMENTARY INFORMATION: A site-specific EIS is being prepared by the King County Building and Land Development Division on the John Henry No. 1 mine, in response to a request for a decision on rezoning the area from general to quarrying and mining. The Federal EIS will build on the county EIS and use existing data and reports to the extent legally permissible. It should be noted that the decisions which the county and OSM must make are different, and the two EIS's must cover those different decisions.

The proposed John Henry No. 1 mine is a new surface coal mine. A total of 362 acres of privately owned surface will be disturbed over the mine's 16-year life. The maximum annual production at the proposed John Henry No. 1 mine will be 250,000 tons of coal per year. Pacific Coast Coal Company has leased the coal, to be mined, from Palmer Coking Coal Company. The coal will be removed, from two pits, using 12.5-cubic-yard front end loaders and 55-ton articulated haul trucks. Pit No. 1,

scheduled to be opened in 1984, will be mined to a maximum depth of approximately 250 feet, with the removal of coal from the Franklin seams 10, 9, 8, and 7. Pit No. 2 scheduled for coal removal in the fourth year of production, will also have a maximum depth of approximately 250 feet, with coal to be removed from the Big Dirty and Franklin number 12 coal seams.

August 22, 1983.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-23836 Filed 8-29-83; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, D.C. 20423 and to Gary Waxman, Office of Management and Budget, Room 3001 NEOB, NW., Washington, D.C. 20503. (202) 395-7313.

Type of Clearance: Extension
Bureau/Office: Office of Transportation Analysis

Title of Form: Transmittal Form, ICC

Waybill Sample Manual System

OMB Form NO.: 3120-0065

Agency Form No.: OPAD-2

Frequency: monthly/quarterly

Respondents: Railroads terminating

4,500 carloads or more per year

No. of Respondents: 75

Total Burden Hrs.: 450

Agatha L. Mergenovich

Secretary.

[FR Doc. 83-23770 Filed 8-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Approved Exemption.

SUMMARY: The motor carriers shown below have been granted exemptions

pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemption will be effective on September 29, 1983. Petitions to reopen must be filed by September 19, 1983. Petitions for stay must be filed by September 9, 1983.

ADDRESSES: Send pleadings to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and
- (2) Petitioners representative(s), as shown below

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275-7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

Agatha L. Mergenovich,
Secretary.

[No. MC-F-15250]

Groendyke Investment, Inc.—Continuance in Control Exemption—the Transport Company of Texas and Groendyke Transport, Inc.

Addresses: Send pleadings to:

- (1) Office of the Secretary, and
- (2) Petitioner's representative: Mike Cotton, P.O. Box 1148, Austin, TX 78767

Pleadings should refer to No. MC-F-15250.

Decided: August 19, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343(a)(5), the continuance in control of Groendyke Transport, Inc. (MC-111401), and The Transport Company of Texas (MC-167667) by Groendyke Investment, Inc. (a non-carrier) and its sole stockholder, H. C. Groendyke.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[No. MC-F-15281]

Centra, Inc.—Continuance in Control Exemption—C.T. Transport, Inc., Universal Am-Can Ltd., Et Al

Addresses: Send pleadings to:

- (1) Office of the Secretary, and
- (2) Petitioner's representative: Leonard R. Kofkin, 140 South Dearborn Street, Suite 1515, Chicago, IL 60603

Pleadings should refer to No. MC-F-15281.

Decided: August 18, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343(a), the continuance in control by Centra, Inc., of C.T. Transportation, Inc. (MC-141609), Universal Am-Can, Ltd. (MC-167922), Superior Forwarding Company, Inc. (MC-75406), Port Side Transport, Inc. (MC-161151), Central Transport, Inc. (MC-19311), U.S. Truck Company, Inc. (MC-59336), and McKinlay Transport Limited (MC-123282).

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie vote in this matter, Commissioner Taylor did not participate.

[No. MC-F-15286]

Krajack Tank Lines, Inc.—Purchase Exemption—Kupper Bros., Inc.

Addresses: Send pleadings to:

- (1) Office of the Secretary, and
- (2) Petitioner's representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048

Pleadings should refer to No. MC-F-15286.

Decided: August 23, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior regulatory approval under 49 U.S.C. 11343(e), the purchase by Krajack Tank Lines, Inc. of all the operating rights of Kupper Bros., Inc. contained in permits No. MC-106958 (Sub-Nos. 4, 5, and 6X, including underlying authority in superseded No. MC-106958 and Sub-No. 2).

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[No. MC-F-15301]

U.S. Truck Lines, Inc. of Delaware—Continuance in Control Exemption—Seminole Intermodal Transport, Inc., Et Al.

Addresses: Send pleadings to:

- (1) Office of the Secretary, and
- (2) Petitioner's representative: Earl N. Mervin, 85 East Gay Street, Columbus, OH 43215

Pleadings should refer to No. MC-F-15301.

Decided: August 23, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343(a) the continuance of control of Be-Mac Transport Company, Inc., Brown Express, Inc., Central Truck Lines, Inc., The Cleveland, Columbus & and Cincinnati, Highway, Inc., Kanawha Cartage Company, Mercury Freight Lines, Inc., Motor Express Inc., of Indiana, Motor Express Inc., (NJ), National Tank Truck Delivery, Inc., Ohio Delivery, Inc., Motor Express Rental Corporation, Union Transport Company, Ken-Dale Express, Inc., and Seminole Intermodal Transport Inc. by U.S. Truck Lines, Inc. of Delaware.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[FR Doc. 83-23724 Filed 8-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on

or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the Federal Register on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified

statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an application may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

**Please direct status inquiries to Team 1,
(202) 275-7030**

Volume No. OP-1-355(N)

Decided: August 22, 1983.

By the Commission, Review Board Members, Fortier, Parker, and Dowell.

MC 16831 (Sub-42), filed August 12, 1983. Applicant: MID SEVEN TRANSPORTATION COMPANY, 2323 Delaware Ave., Des Moines, IA 50317. Representative: William L. Fairbank, 1300 United Central Bank Bldg., Des Moines, IA 50309, (515)-288-6041. Transporting *clay products and building materials*, between points in IL, IN, IA, MN, MO, NE and WI.

MC 125551 (Sub-34), filed August 12, 1983. Applicant: K & W TRUCKING CO., INC., P.O. Box 1415, St. Cloud, MN 56302. Representative: E. Lewis Coffey (same address as applicant), (612)-255-7474. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Stearns-Roger, Inc., of Denver, CO.

MC 183721 (Sub-1), filed August 16, 1983. Applicant: CHAPARRAL EQUIPMENT, LEASING AND RENTAL,

INC., 2845 Workman Mill Rd., Whittier, CA 90601. Representative: Miles L. Kavalier, 315 South Beverly Drive, S. 315, Beverly Hills, CA 90212, (213)-277-2323. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with J Freight Service, Inc., of Whittier, CA.

MC 168181 (Sub-2), filed August 11, 1983. Applicant: CINTRAN, INC., 6225 Wiehe Rd., Cincinnati, OH 45237. Representative: James Duvall, 2515 W. Granville Rd., Worthington, OH 43085, (614)-889-2531. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with The Continental Group, Inc., of Stamford, CT.

MC 169680, filed August 2, 1983. Applicant: HILLTOP TRUCKING, INC., 1051 East 835 North, Layton, UT 84041. Representative: Neil Whittier, P.O. Box 639, Bountiful, UT 84010, (801)-546-0551. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. in and west of TX, NM, CO, WY and MT (except AK and HI).

MC 169791, filed August 11, 1983. Applicant: CHARLES W. DAVIS AND CAROL A. DAVIS, dba. DAVIS TRUCKING, 4026 N. 6th, Fresno, CA 93726. Representative: Charles W. Davis, 25200 S.W. Parkway Ave., Suite 200, Wilsonville, OR 97070. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Superior Transportation Systems, Inc., of Wilsonville, OR.

MC 169840, filed August 12, 1983. Applicant: STEVENS RELOCATION SYSTEMS, INC., A DIVISION OF STEVENS FORWARDERS, INC., 121 South Niagara St., Saginaw, MI 48602. Representative: Robert J. Gallagher, 1435 G St., NW., Suite 848, Washington, DC 20005, (202)-628-1642. As a *broker of household goods*, between points in the U.S. (except AK and HI).

**Please direct status inquiries to Team 1,
(202) 275-7030**

Volume No. OP-1-357(N)

Decided: August 23, 1983.

By the Commission, Review Board Members Dowell, Krock, and Fortier.

MC 109431 (Sub-17), filed August 8, 1983. Applicant: FRANK C. KLEIN &

CO., INC., 3600 East 46th Ave., Denver, CO 80216. Representative: James A. Beckwith, 770 Grant St., Suite 228, Denver, CO 80203, (303)-861-4273. Transporting *Petroleum and petroleum products*, (a) between points in Natarona and Carbon County, WY, on the one hand, and, on the other, points in CO, ID, NE, NM, SD, UT and WY, (b) between points in CO, (c) between points in CO, on the one hand, and, on the other, points in ID, KS, NE, NM, OK, TX, UT and WY, and (d) between those points in TX on and north of U.S. Hwy 66, on the one hand, and, on the other, points in CO, KS and NM.

MC 147321 (Sub-10), filed August 10, 1983. Applicant: BILL STARR TRUCKING, INC., 1041 S. Vista Dr., Independence, MO 64056. Representative: Alex Baltimore, Ste. 600, Kansas City, MO 64105, (816)-221-1464. Transporting *printing ink, ink materials and cleaning compounds*, between points in the U.S. (except AK and HI), under continuing contract(s) with Flink Ink Corporation, of Detroit, MI.

MC 148281 (Sub-20), filed August 11, 1983. Applicant: SUSANA TRANSPORT SYSTEMS, INC., 2845 Workman Mill Rd., Whittier, CA 90601. Representative: Miles L. Kavaller, 315 South Beverly Drive, S. 315, Beverly Hills, CA 90212, (213)-277-2323. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with 3 J Freight Service, Inc., of Whittier, CA.

MC 151401 (Sub-8), filed August 8, 1983. Applicant: TRI-SERVICE, INC., P.O. Box 1419, West Chester, PA 19380. Representative: Daniel B. Johnson, 4304 East-West Hwy., Bethesda, MD 20814, (301)-654-2240. Transporting *such commodities* as are dealt in or used by manufacturers of chemicals, between points in the U.S. (except AK and HI).

MC 160461 (Sub-1), filed August 8, 1983. Applicant: LLOYD HOOD d.b.a. HOOD ENTERPRISES, Rt. 1, (P.O. Box 776), Jasper, TN 37347. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (615)-790-2510. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Cumberland Corporation, of Chattanooga, TN.

MC 169730, filed August 8, 1983. Applicant: DENNIS BAUMAN, P.O.B. 94, Erhard, MN 56534. Representative: Robert N. Maxwell, P.O.B. 2471, Fargo, ND 58108, (701)-237-4223. Transporting *building materials*, between points in

MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries to Team 1, (202) 275-7030

Volume No. OP-1-359 (N)

Decided: August 23, 1983.

By the Commission, Review Board Members Fortier, Carleton, and Parker.

MC 2890 (Sub-64), filed August 8, 1983. Applicant: AMERICAN BUSLINES, INC., 1500 Jackson Street, Dallas, TX 75201. Representative: Rebecca Patton (same address as applicant), (214) 655-7796. *Over regular routes*, transporting *passengers*, (1) between Chicago, IL, and Davenport, IA, from Chicago, IL, over Interstate Hwy 55 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Davenport, IA, and return over the same route, (2) between junction Interstate Hwy 55 and IL Hwy 53, and junction Interstate Hwys 80 and 55, from junction Interstate Hwy 55 and IL Hwy 53 over IL Hwy 53 to Joliet, IL, then over Interstate Hwy 80 to junction Interstate Hwy 55, and return over the same route, (3) between St. Louis, MO, and junction Interstate Hwys 270 and 44, from St. Louis over Interstate Hwy 70 to junction Interstate Hwy 270, then over Interstate Hwy 270 to junction Interstate Hwy 44, and return over the same route, (5) between San Francisco, CA, and Cordelia, CA, from San Francisco over U.S. Hwy 101 to San Jose, then return over U.S. Hwy 101 to junction CA Hwy 17, then over CA Hwy 17 to junction CA Hwy 238, then over CA Hwy 238 to junction Interstate Hwy 680, then over Interstate Hwy 680 to Cordelia, and return over the same route, (5) between San Diego, CA, and junction CA Hwy 31 and Interstate Hwy 15, from San Diego over Interstate Hwy 15 to junction CA Hwys 31 and 91, then over CA Hwy 31 to junction Interstate Hwy 15, and return over the same route, (6) between Rancho, CA, and Riverside, CA, over Interstate Hwy 15E, (7) between Oceanside, CA, and junction CA Hwy 76 and Interstate Hwy 15, over CA Hwy 76, (8) between Brawley, CA and Coachella, CA, over CA Hwy 86, (9) between Santa Ana, CA, and Long Beach, CA, over CA Hwy 22, (10) between Yuma, AZ, and San Diego, CA, over Interstate Hwy 8, (11) between junction Interstate Hwy 8 and CA Hwy 98 (East of Calexico), and junction Interstate Hwy 8 and CA Hwy 98 (West of Calexico), over CA Hwy 98, (12) between Union City, NJ and Camden, NJ, from Union City over access roads to Interstate Hwy 95 (New Jersey Turnpike), then over Interstate Hwy 95 to Exit 4, then over NJ Hwy 73 to junction NJ Hwy 38, then over NJ Hwy

38 to Camden, and return over the same route, then over Interstate Hwy 95 to junction NJ Hwy 70, then over NJ Hwys 70 and 38 to Camden and return over the same route, then over Interstate Hwy 95 to Exit 3, then over NJ Hwy 42 to Camden, and return over the same route, (13) between Baltimore, MD, and Bedford, PA, from Baltimore over Interstate Hwy 70 to Exit 11, then over access routes to Bedford, and return over the same route, and serving the off-route point of Hagerstown, MD, (14) between Washington, DC, and Frederick, MD, from Washington, DC over U.S. Hwy 29 to Silver Spring, then over MD Hwy 97 to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction Interstate Hwy 270, then over Interstate Hwy 270 to Frederick, and return over the same route, (15) between junction Interstate Hwy 76 (East) and Interstate Hwy 680, and junction Interstate Hwy 80 and Interstate Hwy, 76 (West), from junction Interstate Hwy 76 (East) and Interstate Hwy 680 over Interstate Hwy 680 to Youngstown, then over Interstate Hwy 680 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76 (West), and return over the same route, and (16) between junction Interstate Hwy 295 and NJ Hwy 73 and junction Interstate Hwy 295 and NJ Hwy 42, over Interstate Hwy 295, serving all intermediate points in connection with routes (1) to (16) above.

Note.—Applicant intends to tack the sought rights to its existing authority. Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

MC 19311 (Sub-84), filed August 16, 1983. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Elmer J. Maue (same address as applicant), (313) 939-7000. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contract(s) with Homelite Div. Textron, Inc., of Memphis, TN.

MC 109780 (Sub-85), filed August 2, 1983. Applicant: TRAILWAYS, INC., 1500 Jackson Street, Dallas, TX 75201. Representative: Rebecca Patton (same address as applicant), (214) 655-7796. *Over regular routes*, transporting *passengers*, (1) Between San Francisco, CA and junction Interstate Hwys 680 and 580, from San Francisco over U.S. Hwy 101 to San Jose, then return over U.S. Hwy 101 to junction CA Hwy 17, then over CA Hwy 17 to junction CA Hwy 237, then over CA Hwy 237 to

junction Interstate Hwy 680, then Interstate Hwy 680 to junction Interstate Hwy 580, and return over the same route, (2) between Livermore, CA and junction CA Hwy 84 and Interstate Hwy 680, over CA Hwy 84, (3) between Sacramento and Red Bluff, CA, over CA Hwy 99, (4) between Los Angeles and Santa Monica, CA, over Interstate Hwy 10, (5) between Los Angeles and San Fernando, CA, from junction Interstate Hwy 10 and CA Hwy 11 over CA Hwy 11 to junction CA Hwy 42, then over CA Hwy 42 to Inglewood, then over Interstate Hwy 405 to junction CA Hwy 118, then over CA Hwy 118 to San Fernando, and return over the same route, (6) between Pomona, CA and junction Interstate Hwys 210 and 5, over Interstate Hwy 210, (7) between St. Louis, MO, and Champaign, IL, from St. Louis over Interstate Hwy 55 to junction IL Hwy 48, then over IL Hwy 48 to junction Interstate Hwy 72, then over Interstate Hwy 72 to Champaign, and return over the same route, (8) between St. Louis, MO, and junction Interstate Hwys 270 and 55, from St. Louis over Interstate Hwy 70 to junction U.S. Hwy 67, then over U.S. Hwy 67 to junction Interstate Hwy 270, then over Interstate Hwy 270 to junction Interstate Hwy 55 in IL, and return over the same route, (9) between Joplin, MO, and junction Interstate Hwy 44 and U.S. Hwy 66/69 at or near Vinita, OK, from Joplin over U.S. Hwy 71 to junction Interstate Hwy 44, then over Interstate Hwy 44 to junction U.S. Hwy 66/69, and return over the same route, (10) between Cameron, MO and Kansas City, Mo, over Interstate Hwy 35, and (11) between Sikeston, MO, and Cairo, IL, over Interstate Hwy 57, serving all intermediate points in connection with routes (1) to (11) above.

Note: Applicant intends to tack the sought rights to its existing authority. Applicant seeks to provide regular route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922 (c)(2)(B) over the same route.

MC 135100 (Sub-13), filed August 15, 1983. Applicant: SIGNAL TRANSPORT, INC., Box 577 (6th and Locust Streets), Chatsworth, IL 60921. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue, N.W., Suite 500, Washington, DC 20006, (202) 828-5015. Transporting (1) food and related products, under continuing contract(s) with manufacturers, distributors and dealers of food and related products, (2) pulp, paper and related products, under continuing contract(s) with manufacturers, distributors and dealers of pulp, paper and related products, (3) clay, concrete, glass or stone products, under continuing contract(s) with

manufacturers, distributors and dealers of clay, concrete, glass or stone products, (4) metal products, under continuing contract(s) with manufacturers, distributors and dealers of metal products, (5) rubber and plastic products, under continuing contract(s) with manufacturers, distributors and dealers of rubber and plastic products, and such commodities as are dealt in or used by wholesale, retail and discount stores, under continuing contract(s) with wholesale, retail and discount stores, between points in the U.S. (except AK and HI).

MC 158651 (Sub-21), filed August 15, 1983. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Ave., Wausau, WI 54401. Representative: John E. Koci (same address as applicant), (715) 675-9481. Transporting household goods, between points in the U.S., under continuing contract(s) with Nalco Chemical Company, of Oak Brook, IL.

MC 163570 (Sub-3), filed August 15, 1983. Applicant: CHARLES ALFORD TRUCK LINES, INC., P. O. Box 732, Bridge City, TX 77611. Representative: C. W. Ferebee, 3910 FM 1960 W., Suite 106, Houston, TX 77068, (713) 537-8156. Transporting petroleum products, between Houston and Dallas, TX, New Orleans, LA, and Tulsa, OK, on the one hand, and, on the other, points in AR, LA, MS, and OK.

MC 169821, filed August 11, 1983. Applicant: REGAL TRUCKING CO., 2317 Westwood Ave., P.O. Box 6786, Richmond, VA 23230. Representative: Paul D. Collins, 7761 Lakeforest Drive, Richmond, VA 23235, (804) 745-0446. Transporting general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in DE, GA, KY, MD, NJ, NC, PA, SC, TN, VA, WV, and DC.

Please direct status inquiries to Team 1, (202) 275-7030

Volume No. OP-1-361 (NO)

Decided: August 23, 1983.

By the Commission. Review Board Members Carleton, Parker, and Dowell
MC 14781 (Sub-15), filed August 15, 1983. Applicant: GOTTRY CORP., 999 Beahan Rd., Rochester, NY 14624. Paul F. Sullivan, Suite 202, 3408 Wisconsin Ave., N.W., Washington, DC 20016, (202)-363-1848. Transporting general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in U.S. (except AK and HI).

MC 42261 (Sub-158), filed August 9, 1983. Applicant: LANGER TRANSPORT CORP. Box 305, Rte 1 & Foot of Danforth

Ave., Jersey City, NJ 07303. Representative: Daniel J. Sweeney, 1750 Pennsylvania Ave., NW, Washington, DC 20006, (202)-393-5710. Transporting general commodities (except classes A and B explosives, and household goods) between points in U.S. (except AK and HI), under continuing contract(s) with (1) Air Products and Chemicals, Inc., of Allentown, PA, (2) Celanese Chemical Co., of Dallas, TX, (3) Mobil Oil Corporation, of Fairfax, VA, and (4) Scott Paper Company, of Philadelphia, PA.

MC 88310 (Sub-5), filed August 17, 1983. Applicant: GOLDEN WEST FREIGHT LINES d/b/a. GOLDEN WEST TRANSPORT, P.O. Box 5817, Bakersfield, CA 93308. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805)-872-1106. Transporting general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in CA.

MC 117370 (Sub-49), filed August 8, 1983. Applicant: STAFFORD TRUCKING, INC., 2155 Hollyhock Lane, Elm Grove, WI 53122. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705-0086, (608)-238-3119. Transporting general commodities (except classes A and B explosives and household goods), between points in IL, IN, IA, KY, MI, MN, MO, OH and WI.

MC 155051 (Sub-3), filed August 5, 1983. Applicant: COATS & CLARK SALES CORPORATION, 2915 Northeast Parkway, Doraville, GA 30340. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404)-477-1525. Transporting general commodities (except classes A and B explosives and household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Castellaw Transportation Consultants, Inc., of Jonesboro, GA.

MC 159781 (Sub-5), filed August 5, 1983. Applicant: WESTPOINT PEPPERELL TRANSPORTATION COMPANY, P.O. Box 71, West Point, GA 31833. Representative: Michael F. Morrone, 1150 17th St., NW, Washington, DC 20036, (202)-457-1124. Transporting general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with (1) SCM Corporation of Cleveland, OH, (2) J.A. Tucker Company, of Westville, NJ, (3) West-Point Pepperell Broker Service, West Point-Pepperell, Inc., of West Point, GA.

and (4) Sonnet Transportation Consultants, Inc., of Lansing, IL.

MC 169691, filed August 5, 1983. Applicant: DAY & NIGHT TRANSPORTATION SERVICES, INC., 300 Nixon, Lot 11, Noblesville, IN 46060. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204, (317)-638-1301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in CA and those points in the U.S. in and east of MN, IA, MO, KS, OK and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169871, filed August 16, 1983. Applicant: NEW MEXICO VAN LINES, INC., d.b.a. ADMIRAL WAREHOUSE COMPANY, 8225 Washington Blvd., NW., Albuquerque, NM 87113. Representative: Robert W. Wright, Jr., 5711 Ammons St., Arvada, CO 80002, (303)-424-1761. Transporting *general commodities* (except classes A and B explosives and household goods and commodities in bulk), between points in NM.

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP-2-379

Decided: August 23, 1983.

By the Commission, Review Board Members Fortier, Krock, and Carleton.

W-1332 (Sub 1), filed August 15, 1983. Applicant: ALTER BARGE LINE, INC., 2333 Rockingham Rd., Davenport, IA. Representative: Edward G. Bazelon, 135 S. LaSalle St., Suite 2106, Chicago, IL 60603, 312-236-9375. To operate as a *contract carrier, by water*, transporting *general commodities* (1) between points and port on the Mississippi, Illinois, Ohio, Missouri, Tennessee, Arkansas, and Cumberland Rivers and the Intercoastal Canal and their tributaries, (2) Lake Michigan between Milwaukee, WI and Burns Harbor, IN, and (3) the Gulf of Mexico between Key West, FL and Brownsville, TX, and all tributary and connecting waterways. Such dual operations are approved. This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

Note.—Applicant holds water common carrier authority in the same area.

MC 107012 (Sub 856), filed August 3, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Ft Wayne, IN 46801. Representative: Margaret S. Vegeler (same address as applicant), 219-429-2213. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Management Assistance, Inc., Sorbus Service Division, of Frazer, PA.

MC 147793 (Sub 4), filed August 8, 1983. Applicant: C. L. HALL, P. O. Box 179, Cumby, TX 75433. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245, 214-358-3341. Transporting *fertilizer*, between points in NM, TX, OK, KS, MO, AR, NE, IA, MS, CO, LA, TN, and KY.

MC 154432 (Sub 2), filed August 8, 1983. Applicant: FORTY EIGHT TRANSPORT, INC., 16059 S. Crawford Ave., Markham, IL 60426. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602, 312-236-8225. Transporting *machinery, pulp, paper and related products, chemicals and related products, iron and steel articles, plastic film and sheeting, and insulation materials*, between Chicago, IL, on the one hand, and, on the other, point in the U.S. (except AK and HI).

MC 156623 (Sub-1), filed August 9, 1983. Applicant: LOYLEE COMPANY, INC., East 2223 Cleveland, Spokane, WA 99207. Representative: Reed L. Sherar, 242 Cervantes, Lake Oswego, OR 97034, 503-636-5220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with Circle H Consolidated, Inc., of Spokane, WA.

MC 166203 filed August 10, 1983. Applicant: CUSTOMIZED TRANSPORTATION, INC., 54 Sheridan Ave., Elmira Heights, NY 14903. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, 301-797-6060. Transporting *general commodities* (except classes A and B explosives, household good, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 168932, filed August 8, 1983. Applicant: M.W. LOOMER, d.b.a. SPLXPRESS 2200 N. 8th St.—Box 296, Independence, KS 67301. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, 515-244-2329. Transporting *wallboard adhesives and caulking compounds*,

between points in the U.S. (except AK and HI), under continuing contract(s) with Ohio Sealants, Incorporated, of Mentor, OH.

MC 169793 filed August 10, 1983. Applicant: JOHN H. McMULLEN, JR., d.b.a. EAST TEXAS TRANSPORT, Rt. 7, Box 344, Tyler, TX 75707. Representative: Carole W. Clark, P.O. Box 747, Tyler, TX 75710, 214-593-8413. Transporting *repossessed motor vehicles*, between points in the U.S., under continuing contract(s) with Ford Motor Credit Corporation, of Tyler, TX.

MC 169813, filed August 11, 1983. Applicant: ELTON ERICKSON, d.b.a. ERICKSON TRUCKING, Route 2, Box 10, Central City, NE 68826. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506, 402-488-4841. Transporting *grain storage, grain drying and handling equipment*, between points in Shelby County, IL, on the one hand, and, on the other, points in Hall County, NE.

Please direct status inquiries about the following to Team Four at (202) 275-7669

Volume No. OP-4-567

Decided: August 22, 1983.

By the Commission, Review Board, Members: Carleton, Parker and Fortier.

MC 29957 (Sub-103), filed August 12, 1983. Applicant: TRAILWAYS SOUTHERN LINES, INC., 327 Gayoso, Memphis, TN 38103. Representative: Rebecca Patton, 1500 Jackson St., Suite 422, Dallas, TX 75201, (214) 655-7796. Over regular routes, transporting *passengers*, (1) between Sikeston, MO, and Effingham, IL; from Sikeston over U.S. Hwy 60 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction IL Hwy 3, then over IL Hwy 3 to Cairo, return over IL Hwy 3 to junction Interstate Hwy 57, then over Interstate Hwy 57 to Effingham, and (2) between junction Interstate Hwy 60 and U.S. Hwy 60 and junction Interstate Hwy 57 and U.S. Hwy 60, from junction Interstate Hwy 55 and U.S. Hwy 60 over Interstate Hwy 55 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction U.S. Hwy 60, in (1) and (2) above and return the same routes and serving all intermediate points. NOTES: (1) Applicant intends to tack this authority with its presently authorized regular-route operations. (2) Applicant seeks to provide regular-route service in interstate of foreign commerce and in intrastate commerce under 49 U.S.C. 10922 (c)(2)(B) over the same route.

MC 42137 (Sub-3), filed August 16, 1983. Applicant: VICTORY VAN LINES, INC., 6 Van Duzer St., Staten Island, NY

10301. Representative: Alvin Altman, 888 7th Ave., New York, NY 10106, (212) 245-7700. Transporting *household goods*, between points in AL, CT, DE, FL, GA, IL, IN, KY, LA, MD, MA, ME, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, TX, VA, VT, WV, WI, and DC.

MC 71106 (Sub-4), filed August 15, 1983. Applicant: MUNCE BROS. TRANSFER & STORAGE CO., 221 South Franklin Ave., Sioux Falls, SD 57103. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101, (605) 335-1777. Transporting *household goods, machinery, and communication equipment*, between points in SD and ND.

MC 146956 (Sub-2), filed August 16, 1983. Applicant: WEST EXPRESS TRUCKING COMPANY, Box 60, Island, KY 42350. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223-8244. Transporting (1) *lumber and wood products*, between those points in KY on and west of U.S. Hwy 31W, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (2) *metal products*, between Chicago, IL, points in Spencer County, IN, and those points in KY on and west of U.S. Hwy 31W, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150866 Sub 9, filed August 10, 1983. Applicant: THELL W. GUBLER & SONS, TRUCKING, 1301 East 700 North, P.O. Box 574, St. George, UT 84770. Representative: Thell W. Gubler (same address as applicant), (801) 673-4856. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with R & R Truck Brokers, Inc., of Medford, OR.

MC 154436 (Sub-6), filed August 15, 1983. Applicant: MARILYN THOMAS, d.b.a. MAT TRUCKING, 2604 W. Pleasant Ridge Rd., Arlington, TX, 76016. Representative: Billy R. Ried, 1721 Carl St., Ft. Worth, TX 76103, (817) 332-4718. Transporting *electrical machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with General Electric Company, of Wawick, RI.

MC 159737 (Sub-2), filed August 12, 1983. Applicant: B V & W TRUCKING, LTD., 219 West Pembroke Ave., Hampton, VA 23669. Representative: Frank L. Willard, Suite No. 1001, First & Merchants National Bank Bldg., Norfolk, VA 23510, (804) 627-0070. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MD, NC, VA, and DC, on the one hand, and, on the other, points in AL, CA, CT, DE, FL, GA, IL, IN, KS, MD, MO, LA,

MA, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, TX, VA, VT, WV, and DC.

Volume No. OP4-568

Decided: August 22, 1983.

By the Commission, Review Board, Members: Fortier, Corleton and Parker.

MC 160416 (Sub-1), filed August 15, 1983. Applicant: HARBOR TRANSFER, INC., 2400 S. Weccacoe Ave., Philadelphia, PA 19148. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966, (215) 357-7220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 163526 (Sub-2), filed August 4, 1983. Applicant: TRINITY PAPER & PLASTICS, INC., 529 Fifth Ave., New York, NY 10017. Representative: Ronald I. Shapps, 450 7th Ave., New York, NY 10123, (212) 239-4610. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with TDS Brokerage, Inc., of Des Plaines, IL, Carnation Company, of Los Angeles, CA, Wakefern Food Corporation, of Elizabeth, NJ, and WBC Etrusion Products, Inc., of Lowell, MA.

MC 165466 (Sub-1), filed August 16, 1983. Applicant: GILBERT & SONS TRUCKING, INC., Rt. 4, Box 528, Tecumseh, OK 74873. Representative: William P. Parker, 4400 N. Lincoln, Suite 10, Oklahoma City, OK 73105, (405) 424-3301. Transporting *metal, wood and plastic products, machinery, building and construction materials, and Mercer commodities*, between points in the U.S. (except AK and HI).

MC 169627, filed August 15, 1983. Applicant: STOKELY-VAN CAMP, 941 N. Meridian St., Indianapolis, IN 46204. Representative: C. Thomas Everhart, 1200 W. Troy Ave., Indianapolis, IN 46225, (317) 787-2291. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Oconomowoc Canning Company, of Oconomowoc, WI, Union Camp Corporation, of Wayne, NJ, and American Backhauls Corporation, of Chicago, IL.

MC 169867, filed August 15, 1983. Applicant: WRUBLE ELEVATOR INC., 224 Water St., Harbor Beach Rd., Harbor Beach, MI 48441. Representative: Robert Wruble, 8154 Sand Beach, MI 48441, (517) 479-3623. Transporting *soybean*

meal, between points in MI, OH, IN and IL.

MC 169876, filed August 16, 1983. Applicant: MIKE LEWIS, d.b.a. LEWIS TRANSPORTERS, 3905 Pierce St., Wheat Ridge, CO 80033. Representative: James A. Beckwith, Suite 228, 770 Grant St., Denver, CO 80203, (303) 861-4273. Transporting *construction equipment, materials and supplies*, between points in CO, WY, NE, NM, KS, OK, and UT, under continuing contract(s) with Air Rentals, Inc., of Denver, CO and Monarch Equipment, Inc., of Commerce City, CO.

Volume No. OP4-569

Decided: August 22, 1983.

By the Commission, Review Board, Members: Carleton, Dowell and Fortier.

MC 151566 (Sub-77), filed August 9, 1983. Applicant: PERRY TRANSPORT, INC., 601 S. Beacon Blvd., Grand Haven, MI 49417. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005, (202) 296-3555. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 165396 (Sub-1), filed August 10, 1983. Applicant: HOWMET DISPATCH CORPORATION, 475 Steamboat Rd., P.O. Box 1960, Greenwich, CT 06830-1960. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or show that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343 and or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

MC 169757, filed August 8, 1983. Applicant: RYAN POTATO COMPANY, Box 388, East Grant Forks, MN 56721. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402, (612) 340-0808. Transporting (1) *food and related products*, between points in the U.S. (except AK and HI); (2) *general*

commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in ND, SD, MN, WI, and IA, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (3) *textile mill products, and pulp, paper and related products*, between New Orleans, LA, and points in Jefferson County, AR, on the one hand, and, on the other, Kansas City, MO.

Volume No. OP4-570

Decided: August 22, 1983.

By the Commission, Review Board,
Members: Dowell, Fortier and Krock.

MC 151887 (Sub-2), filed August 16, 1983. Applicant: BODONA, INC., 1011 No. Colony Rd., Meriden, CT 06450. Representative: Edward M. Taber, 58 Williams St., Thomaston, CT 06787, (203) 283-8313. Transporting *metal products*, between points in CT, MA, ME, NH, RI, VT, NY, NJ, PA, OH, MI, IL, IN, WI, and MO.

MC 159966 (Sub-1), filed August 11, 1983. Applicant: JAMES A. PRICE AND LOUIS J. GREPPI, d.b.a. P&L TRUCKING, 60 W. Barham Ave., Santa Rosa, CA 95401. Representative: James H. Gulseth, 100 Bush St., 21st Fl., San Francisco, CA 94104, (415) 986-5778. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Napa, Yolo, Sacramento, Solano, Marin, Contra Costa, Alameda, Santa Clara, San Mateo, Santa Cruz, and San Francisco Counties, CA.

MC 161246 (Sub-1), filed August 16, 1983. Applicant: KENTON CRATE & PALLET COMPANY, INC., 18 Betty St., Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW., Washington, DC 20005, (202) 296-3555. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Masten Lumber & Supply, Inc., of Milford, DE.

MC 164117 (Sub-1), filed August 17, 1983. Applicant: ALVIS H. WILBURN, d.b.a. A & H SALVAGE, P.O. Box 668, Henderson, TX 75653-0668. Representative: Alvis H. Wilburn (same address as applicant), (214) 657-9394. Transporting *machinery and metal products*, between points in the U.S., under continuing contract(s) with Dutch Electric Corp., of Reading, PA, Empire Machine Co., of Phoenix, AZ, K.R. Defenbaugh, of Huntsville, TX, O'Brien Power Equipment Co., of Houston, TX, Saltzman Auto Electric & Equipment, of

Tulare, CA, Schaefer Valve Service, Inc., of Arroyo Grande, CA, Joy Pipe of Texas, Inc., Uvalde, TX, Nelson and Nelson Equipment Co., of Bakersfield, CA, Coast Petro-Chem, of Camerillo, CA, Campbell Equipment Co., Inc., of Bakersfield, CA, Delta Wire Rope & Slings, Inc., of Broussard, LA, Tractorland, Inc., of Riverside, CA, S&S Pipe & Supply Inc., of Huntsville, TX, P.C. James Company, of Ft. Worth, TX, Chrome Crankshaft Co., of Bell Gardens, CA, Hawthorne Engine Systems, of San Diego, CA, Offield Equipment, of Amarillo, TX, Myers-Ward Tractor & Equipment Co., Inc., of Fresno, CA, Hardin Machinery, Inc., of Carmi, IL, Duquesne Electric & Manufacturing Company, of Pittsburgh, PA, West Coast Wire Rope & Rigging, Inc., of Oakland, CA, and Preco Equipment, Co., of Houston, TX.

MC 164536 (Sub-2), filed August 17, 1983. Applicant: P.D.P.D. CORPORATION, d.b.a. P & K EXPRESS, 98 Frelinghuysen Ave., Newark, NJ 07714. Representative: Morton E. Kiel, Suite 2B, 475 South Main St., P.O. Box 489, New City, NY 10956, (914) 638-4007. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 166657, filed August 15, 1983. Applicant: CLATTERBAUGH, INC., P.O. Box 828, Charlottesville, VA 22902. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229, (804) 282-3809. Transporting *aggregates, ammonium sulphate, coal, diammonium phosphate, fertilizer and fertilizer materials, and limestone*, between points in AL, CT, GA, IL, IN, KY, MA, MD, MO, NC, OH, PA, SC, TN, VA, WV, and DC.

Volume No. OP4-571

Decided: August 22, 1983.

By the Commission, Review Board,
Members: Fortier, Dowell and Carleton.

MC 167906, filed August 16, 1983. Applicant: GRIFF JONES TRANSPORT, INC., 177 Old Churchmans Rd., New Castle, DE 19720. Representative: Colin Barrett, 11764 Indian Ridge Rd., Reston, VA 22091 (703) 860-8521. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the U.S. in and east of MN, IA, MO, KS, AR, and TX.

MC 169736 (Sub-1), filed August 11, 1983. Applicant: VAN MGT. CORP., P.O. Box 35610, Louisville, KY 40232. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202 (502) 589-5400. Transporting *such commodities as are dealt in by*

manufacturers and distributors of building, construction, and mining and metal materials, between points in the U.S. (except AK and HI), under continuing contract(s) with manufacturers and distributors of building, construction, and mining and metal materials. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343(A) of submit an affidavit to the Secretary's office indicating why such approval is unnecessary. In lieu of filing an application for approval, such person or persons may wish to file a letter-petition for exemption form Commission action. Such a petition should include the notice required by Section 11343 (e)(2). See Ex Parte 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property under 49 U.S.C. 11343, 47 FR 42947*. In order to expedite issuance of any authority, please submit a copy of the affidavit, or proof of filing the petition or application(s) concerning common control to Team 4, Room 2410.

MC 169857, filed August 15, 1983. Applicant: DAVE FRANICH, 1231 E. First St., Butte, MT 59701. Representative: William E. Seliski, 2 Commerce St., P.O. Box 8255 (406) 543-8369. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CA, ID, MT, OR and WA, on the one hand, and, on the other, those points in the U.S. in and west of MI, OH, KY, TN, GA, and FL (except AK and HI).

MC 169887, filed August 17, 1983. Applicant: WOODWARD TRUCKING CO., 909 West Amador, P.O. Box 190, Las Cruces, NM 88004. Representative: William J. Lippman, P.O. Box 6060, Snowmass Village, CO 81615 (303) 923-4565. As a *broker of general commodities* (except household goods), between points in the U.S.

[FR Doc. 83-23773 Filed 8-29-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Internal Security Order

AGENCY: Justice Management Division, Justice Department.

ACTION: Notice of internal security order, DOJ 2620.8

SUMMARY: This notice sets forth an internal Department of Justice security order. DOJ 2620.8. DOJ 2620.8 defines the

Justice Department's employees' and contractors' responsibilities to protect classified information and to submit to prepublication review. This order is set out below.

FOR FURTHER INFORMATION CONTACT: Kevin D. Rooney, Assistant Attorney General for Administration, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530 (202-633-3191).

Dated August 25, 1983.

William D. Van Stavoren,
Acting Assistant Attorney General for
Administration.

[DOJ 2620.8]

August 25, 1983.

**Subject: Employee Obligations to Protect
Classified Information and Submit to
Prepublication Review**

Distribution: BUR/H-1, OBD/F-2, OBD/H-1.

Initiated By: Security Staff, Justice
Management Division.

1. *Purpose.* The purpose of this order is to explain and clarify Department of Justice (DOJ) policies concerning implementation of the prepublication review program.

2. *Scope.* This order applies to all persons granted access to classified information in the course of their employment at the DOJ and DOJ contractors granted such access.

3. *Authority.*

a. Executive Order 12356, "National Security Information."

b. National Security Decision Directive-84 entitled "Safeguarding National Security Information."

c. 28 CFR 0.75(p).

4. *Policy.* All persons granted access to classified information in the course of their employment at the DOJ are required to safeguard that information from unauthorized disclosure. This nondisclosure obligation is imposed by statutes, regulations, access agreements, and the fiduciary relationships of the persons who are entrusted with classified information in the performance of their duties. The nondisclosure obligation continues after DOJ employment terminates.

As an additional means of preventing unlawfully disclosures of classified information, the President has directed that all persons with authorized access to Sensitive Compartmented Information (SCI) be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of SCI and other classified information. SCI is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods.

5. *Responsibilities.*

a. The prepublication review provision requires that DOJ employees granted access to SCI submit certain material to the Department, whether prepared during or subsequent to DOJ employment, prior to its publication to provide an opportunity for

determining whether an unauthorized disclosure of SCI or other classified information would occur as a consequence of its publication.

The obligations not to disclose classified information and to comply with agreements requiring prepublication review have been held by the Supreme Court to be enforceable in civil litigation. *Snepp v. United States*, 444 U.S. 507 (1980).

b. It must be recognized at the outset that it is not possible to anticipate each and every question that may arise. The Department will endeavor to respond, however, as quickly as possible to specific inquiries by present and former employees concerning whether specific material require prepublication review. Present and former employees are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. All questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Office of Intelligence Policy and Review, Room 8325, U.S. Department of Justice, 10th & Constitution Avenue, NW., Washington, D.C. 20530. The official view of the Department on whether specific materials require prepublication review may only be expressed by the Counsel for Intelligence Policy and persons should not act in reliance upon the view of other Department personnel.

c. Employees with access to SCI will be required to sign agreements providing for prepublication review. Prepublication review is required only as expressly provided for in an agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information and are subject to enforcement actions if they disclose classified information in an unauthorized manner. Therefore, present or former employees are encouraged voluntarily to submit material for prepublication review if they believe that such material may contain classified information even if such submission is not required by a prepublication review agreement. Where there is any doubt, present and former employees are urged to err on the side of prepublication review to avoid unauthorized disclosures and for their own protection.

d. Present or former employees who have signed agreements providing for prepublication review are required to submit any material prepared for disclosure to others that contains or purports to contain:

- (1) any SCI, any description of activities that produce or relate to SCI, or any information derived from SCI;
- (2) any classified information from intelligence reports or estimates; or
- (3) any information concerning intelligence activities, sources or methods.

The term "intelligence activities" in paragraph 5.d.(3) means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to Executive Order 12333. However, there is no requirement to submit for review any materials that exclusively contain information lawfully obtained at a time when

the author has no employment, contract, or other relationship with the United States Government and which are to be published at such time.

e. A person's obligation to submit material for prepublication review remains identical whether such person actually prepares the material or causes or assists another person, such as a ghost writer, spouse or friend, or editor in preparing the material. Material described in paragraph 5.d must be submitted for prepublication review prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain SCI or classified information. See *Snepp v. United States*, *supra*.

f. The requirement to submit information or materials for prepublication review is not limited to any particular type of material or disclosure. Written materials include not only books but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because fictional treatment may convey factual information, fiction is also covered if it is based upon or reflects information described in paragraph 5.d.

g. Oral statements are also included when based upon written materials, such as an outline of the remarks. There is no requirement to prepare such material for prior review, however, unless there is reason to believe in advance that oral statements may contain SCI or other classified information. Thus, a person may participate in an oral presentation of information where there is no opportunity for prior preparation (e.g., news interview, panel discussion) unless there is reason to believe in advance that such oral expression may contain SCI or other classified information. This recognition of the problems with oral representations does not, of course, exempt present or former employees from liability for any unauthorized disclosures of SCI or classified information that may occur in the course of even extemporaneous oral expressions.

h. Material that consists solely of personal views, opinions or judgments and does not contain or imply any statement of fact that would fall within the description in paragraph 5.d is not subject to the prepublication review requirement. For example, public speeches or publication of articles on such topics as proposed legislation or foreign policy do not require prepublication review as long as the material does not directly or implicitly constitute a statement of an informational nature that falls within paragraph 5.d. Of course, in some circumstances the expression of "opinion" may imply facts and thus be of such a character as to require prior review.

i. Obviously, the purposes of prepublication review will be frustrated where the material in question already has been disseminated to

unauthorized persons. Comparison of the material before and after the review would reveal which items of classified information, if any, had been deleted at the Department's request. Consequently, the Department will consider these obligations to have been breached in any case, whether or not the written material is subsequently submitted to the Department for prepublication review, where it already has been circulated to publishers or reviewers, or has otherwise been made available to unauthorized persons. While the Department reserves the right to review such material for purposes of mitigating damage that may result from the disclosure, such action shall not prevent the United States Government and the Department from pursuing all appropriate remedies available under law as a consequence of the failure to submit the materials for prior review and/or any unauthorized disclosure of SCI or classified information.

j. Materials submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of SCI and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted to the Office of Intelligence Policy for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

k. The Counsel for Intelligence Policy will respond substantively to prepublication review requests within 30 working days. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 working days. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Authors who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or by giving the Department notice and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Of course, until any civil action is resolved in court, employees remain under an obligation not to disclose or publish information determined by the Government to be classified.

l. Nothing in this order should be construed to alter or waive the Department's authority to seek any remedy available to it to prohibit or punish the unauthorized disclosure of classified information.

m. A former DOJ employee who subsequently receives a security clearance or SCI access approval from another department or agency is permitted to satisfy any obligation regarding prepublication review by making submissions to the department or agency that last granted the individual either a security clearance or an SCI access approval.

n. The obligations described herein as applying to DOJ employees also apply with

equal force to contractors who are authorized by the Department to have access to SCI or other classified information.

William D. Van Stavoren,
Acting Assistant Attorney General for Administration.

[FR Doc. 83-23778 Filed 8-29-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities Under OMB Review

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions

about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

EXTENSION (Burden Change)

Employment Standards Administration; Reports of Payments; LS-513; Annually; Business or other for-profit; 720 responses; 360 hours; 1 form.

Form is used by insurance carriers and self-insurers to report compensation and medical payments under the LHWCA and extensions to determine their annual assessment under the Act.

Signed at Washington, D.C. this 25th day of August, 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-23791 Filed 8-29-83; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Stainless Steel and Alloy Tool Steel; Adjustment Assistance Eligibility

On May 18, 1983, the U.S. International Trade Commission (ITC) determined that increased imports of certain stainless steel and alloy tool steel products are a substantial cause of serious injury to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (48 FR 22373).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of

information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on certain stainless steel and alloy tool steel products. The report found as follows:

1. DOL has received and processed 248 petitions for trade adjustment assistance involving workers in the stainless steel and alloy tool steel industry since April 3, 1975, the effective date of the adjustment assistance program, including 133 received during the 1980-1982 period. Eighty-seven petitions were certified covering 108,210 workers, and 161 petitions were denied involving 45,414 workers. An additional 12 petitions covering industry workers were in process as of the date of preparation of this report, and several of 24 other basic steel industry petitions currently under investigation are expected to involve stainless steel and alloy tool steel workers.

As of February 28, 1983, DOL had completed payment of \$71,215,400 in trade readjustment allowances to 36,156 workers formerly employed in plants producing stainless steel and alloy tool steel products. All but \$2,156,000 was paid to workers whose petitions were certified during 1975-1978. Job search allowances of \$18,700 had been paid to 137 industry workers, job relocation allowances of \$99,979 had been paid to 103 industry workers, and 1,577 industry workers had entered training as of February 28, 1983. Payments and benefits data for the 34 petitions certified during early 1983 were not available at the time of this report's preparation.

2. Average employment of production and related workers in the stainless steel and alloy tool steel industry declined steadily 1979 through 1982. Permanent employment levels are expected to continue declining during the next 12 months. Industrywide temporary layoffs are also expected.

3. Unemployment rates for 17 of the 23 areas with plants producing stainless steel and alloy tool steel were above the national unemployment rate of 11.3 percent (unadjusted) for February 1983. Reemployment prospects for present and potentially separated workers in the industry appear to be poor.

4. A total of \$30.5 million (including \$5.5 million carryover from Fiscal Year 1982) is available in Fiscal Year 1983 to provide training, job search and relocation allowances to eligible stainless steel and alloy tool steel workers as well as other workers adversely affected by import competition under the trade adjustment assistance program. Although it is unlikely that funding at this level will meet the

increased demand for training (a result of an upsurge in certifications in the apparel, mining and steel industries), no additional funds are being sought by DOL due to the scheduled termination of the worker adjustment assistance program on September 30, 1983. Currently \$2.0 million in funds has been allotted for Fiscal Year 1984 in order to meet Fiscal Year 1983 phaseout payments of trade readjustment allowances (TRA) which are entitlements funded from the Federal Unemployment Benefit and Allowances (FUBA) account. All other program benefits and allowances (including TRA entitlements for periods of unemployment on or after October 1, 1983) will expire on September 30, 1983, unless the legislative authority is extended. Dislocated workers, including import impacted workers, should benefit from \$110.0 million which has been set aside for the administration and delivery by the States of dislocated worker benefits under the Job Training Partnership Act (JTPA) for Fiscal Year 1983 and the \$240.0 million which has been requested for Fiscal Year 1984.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting Larry Ludwig, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street NW., Room 9120, Washington, D.C. 20213 (phone 202-376-6842).

Signed at Washington, D.C. this 22nd day of August 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-23792 Filed 8-29-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,932]

Ames Coal Co., Logan County, West Virginia; Negative Determination on Reconsideration

On July 11, 1983, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Ames Coal Company, Logan County, West Virginia. This determination was published in the Federal Register on July 19, 1983 (48 FR 32891).

The Department's original determination denied workers of Ames Coal Company eligibility to apply for trade adjustment assistance benefits. The findings showed that the Ames Coal mined metallurgical coal and that worker separations because of increased import could not be substantiated according to the Trade

Act of 1974. The principal reason for the reconsideration was to explore the "appropriate subdivision" and "workers' firm" relationship between the Ames Coal Company and Wheeling Pittsburgh Steel (WPS) and Wheeling Pittsburgh Coal Company (WPCC). The Department in its original determination did not take that relationship into account since workers at WPS and WPCC were not certified at the time of the Department's decision for workers at Ames.

Counsel for the United Mine Workers argued in his request for reconsideration that Ames should be considered an "appropriate subdivision" of WPCC for purposes of certification since WPCC owned the mine and purchased all Ames' coal. Counsel documented other operational integrations as: incurring the exploration costs and securing the mining permits by WPCC, lending of tools and spare parts to Ames, processing Ames' coal together with its own at WPCC's preparation plant, visiting the Ames' minesite—almost on a daily basis—by WPCC supervisory and technical personnel, and both Ames and WPCC were signatories to the 1981 National Bituminous Coal Wage Agreement.

Counsel also argued that even if Ames Coal Company cannot be considered to be an "appropriate subdivision" of WPCC, the Department has certified workers in similarly situated firms, e.g., the Mil Garment Company, TA-W-12,108.

After reconsideration, the question of whether or not the Ames Coal Company was an "appropriate subdivision" of WPCC or WPCC was considered to be the "workers' firm" is irrelevant to a certification determination in this case because the workers at Ames were not separated from employment because of increased imports of coal or steel. Rather, as stated by company officials, Ames' workers were separated because the coal produced by Ames became inferior and unuseable at WPS mills after Ames moved to a new pit at the minesite. Consequently, Ames was unable to meet the terms of the service contract which specified delivery of daily tonnage of clear coal.

Furthermore, counsel's analogy to the Mil Garment Company case (TA-W-12,108) is also irrelevant. The Department certified workers at Mil Garment who produced ladies coats and jackets under contract with clothing manufacturers because, *inter alia*, increased imports of such products contributed importantly to their separation. In the instant case, there was no causal connection between

increased imports of coal or steel and the separation from employment of Ames' workers. As previously stated, Ames company officials attributed the termination of production entirely to the inferior quality of coal produced from the new pit.

Therefore, even if the Ames Coal Company was considered an "appropriate subdivision" of WPCC or if WPCC were determined to be the "workers' firm", Ames' workers could not be certified because their separations from employment were not caused by increased imports as was the separation of WPCC workers.

Conclusion

After reconsideration, I affirm the original denial of eligibility of workers and former workers of Ames Coal Company, Logan County, West Virginia to apply for adjustment assistance. Signed at Washington, D.C. this 23rd day of August 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, UTS.

[FR Doc. 83-23783 Filed 8-29-83; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[Docket No. T-100]

Training Guidelines; Request for Comments and Information

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for written comments and information.

SUMMARY: The Occupational Safety and Health Administration seeks comment on an initiative to encourage employers to provide employees more information and instruction on the recognition, avoidance and prevention of unsafe and unhealthful conditions at the worksite. An employee information program should, at the minimum, inform employees of the specific hazards associated with their work environment and what to do about these hazards.

The set of training guidelines proposed herein is designed to assist employers in providing the safety and health information and instruction needed to enable each of their employees to work at minimal risk to themselves, to fellow employees and to the public. The guidelines are designed to help the employer to: (1) determine whether a worksite problem can be solved by training; (2) determine what training, if any, is needed; (3) prepare instructional objectives; (4) design

learning activities to meet these instructional objectives; (5) conduct training; (6) assess the effectiveness of the training provided to the employee; and (7) revise the training program based on feedback from the employee, the supervisor and others.

Comments are requested in order to assure maximum input from all interested parties.

DATE: Comments must be submitted by September 29, 1983.

ADDRESS: Materials should be submitted in quadruplicate to: Docket Officer, Room S-6212, Docket No. T-100, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, DC 20210. Phone: (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, N.W., Washington, DC 20210. Phone: (202) 523-8148.

I. Background

The Occupational Safety and Health Act of 1970 does not address specifically the responsibility of employers to provide health and safety information and instruction to employees, although Section 5(a)(2) does require that each employer "... shall comply with occupational safety and health standards promulgated under the Act." However, more than 100 of the OSH Act's current standards do contain training requirements. This proposed set of training guidelines can assist employers in meeting these requirements, and in providing the information and instruction that each employee needs to work at minimal risk.

In their efforts to combat occupational injury and illness, safety and health practitioners often speak of the "Three E's—Engineering, Enforcement and Education." These form an interdependent relationship; no one of these alone can do the job. In the past, engineering controls and enforcement have been looked to for solutions to the occupational injury and illness problem more frequently than has education. Recently, however, policy makers, as well as managers and safety and health practitioners, have begun to look more carefully to education and to the role that it can and should play as an occupational injury and illness countermeasure. The National Institute for Occupational Safety and Health's Behavioral and Motivational Factors Branch examined techniques for influencing individual employee

behavior, actions and attitudes in ways that could offer greater self-protection against workplace hazards, and concluded that "... *Training remains the fundamental method for effecting selfprotection against workplace hazards.*" (1) (Emphasis added).

Recently, a number of studies have focused on the importance of employee training as an injury and illness countermeasure. For example, the National Academy of Sciences reported that 90 percent of grain elevator explosions could be avoided if employees were trained better and the amount of grain dust in elevators reduced (2). Another study (this one of coal mine accidents) released within the past year by the National Academy of Sciences recommends that the Federal government double the current training requirements in coal mines in order to reduce accidents (3). In still another report of a rapid rail accident involving multiple fatalities in Washington, DC, investigators criticized management's failure to put into place an adequate program of initial and recurrent training for the system's operating personnel (4).

In addition to these reports which discuss the importance of training as an occupational injury and illness countermeasure, several research studies have examined industrial safety practices in general, and specifically, safety training practices (5), (6), (7), (8), (9), (10), (11), (12), (13). These studies incorporated opinion polls, analyses of factors common to companies having outstanding safety performance, and comparisons of safety program practices in companies with high versus low work injury rates. Typically, it was found that the companies with better records: (1) Included information on job risks and what to do about them in new employee orientation programs; (2) gave both initial and follow-up training in safe job procedures to all employees; (3) gave special safety training to supervisors; and (4) used a variety of safety training techniques, including lectures, films, group discussions, demonstrations, simulations, etc.

Information has become available in recent years with regard to the poor quality, and in some instances total lack, of training programs in occupational safety and health for employers. The Bureau of Labor Statistics has conducted and reported on twelve Worker Injury Report (WIR) surveys to date. These are surveys of individuals who had been injured on the job and who were then asked what type of training, if any, they had received in occupational safety and health risks and

what to do about them. Here are a few of the findings of these surveys:

- Of 1,339 workers who sustained injuries resulting from the use of ladders, 73 percent said that they had not received written instructions pertaining to the care and safe use of ladders;
- Of 724 workers who sustained injuries resulting from the use of scaffolds, 27 percent said that they had not received instructions on the safety requirements for installing the type of scaffold on which they were injured;
- Of 1,667 workers who sustained injuries resulting from the use of power saws, 17 percent said that they had not received safety training on how to use the type of saw with which they were injured;
- Of 1,305 workers who sustained injuries resulting from weeding and cutting operations, 11 percent said that they did not receive safety training on welding and cutting;
- Of 888 workers who sustained head injuries, 71 percent said that they did not receive any instruction concerning hard hats;
- Of 906 workers who sustained eye injuries, 40 percent said that they had not received any instruction concerning eye protection;
- Of 555 workers who sustained injuries to the face, 59 percent said that they did not receive any instruction concerning face protection (i.e., face shield or welding helmet);
- Of 1,146 workers who sustained injuries to the foot, 71 percent said that they had not received any instruction concerning safety shoes;
- Of 554 workers who sustained injuries while servicing equipment, 61 percent said that they had received no instructions on power source lockout procedures;
- Of 836 workers who sustained back injuries associated with lifting, 51 percent said that they had received no information or instruction on lifting/moving;
- Of 815 workers who sustained hand injuries, 66 percent said that they had not been given any information or instruction on gloves or other hand protection; and
- Of 785 workers whose injuries resulted in arm, hand or finger amputation, 59 percent said that they did not receive safety training on how to perform the task in which they were engaged when injured.

From data such as those generated by WIR surveys, and the types of inquiries which employers make of OSHA concerning the content and timing of training programs for employees, it is apparent that additional guidance is

needed by many employers. The training guidelines proposed in this document are designed to provide such assistance.

OSHA has published a document (14) which lists the training requirements which appear in current occupational safety and health standards. OSHA has also published sets of guidelines (15), (16), (17) to assist employers in complying with these requirements, and to aid OSHA compliance safety and health officers and State inspectors in enforcing these requirements in an objective manner. But the majority of current OSHA standards make no reference to the employer's responsibility to provide information and instruction to the employee on job risks and what to do about them.

These proposed guidelines provide the employer with a model for designing, conducting, evaluating and revising training programs. The training model can be used to develop training programs for a variety of occupational safety and health hazards identified at the workplace, and can assist employers in their efforts to meet the training requirements in current or future occupational safety and health standards. A training program designed in accordance with these guidelines can be used to supplement and enhance the employer's other education and training activities.

The set of training guidelines presented here for comment and information does not provide specifics as is true of the training regulations in the Federal Mine Safety and Health Act of 1977. It is not OSHA's intention that these guidelines will become mandatory. Thus, they should not be considered as a forerunner to further regulation in this area. Instead, the proposed guidelines are designed to assist the employer to provide the information and instruction employees need to work at minimal risk in the job to which they are assigned. The proposed guidelines afford the employer a fair amount of flexibility in the selection of content and training program design. OSHA encourages a personalized approach to the informational and instructional programs at individual worksites, thereby enabling the employer to provide the training that is most needed and applicable to local working conditions. However, these guidelines are not intended to be, nor should they be used by employers as a total or complete guide in training or education matters which can result in enforcement proceedings before the Occupational Safety and Health Review Commission. Employee training programs are always an issue in Review Commission cases which involve alleged violations of

training requirements contained in OSHA standards. The adequacy of employee training may also become an issue in contested cases where the affirmative defense of unpreventable employee misconduct is raised. Under case law well-established in the Commission and the courts, an employer may successfully defend against an otherwise valid citation by demonstrating that all feasible steps were taken to avoid the occurrence of the hazard, and that actions of the employee involved in the violation were a departure from a uniformly and effectively enforced work rule of which the employer had neither actual nor constructive knowledge. In either type of case, the adequacy of the training given to employees in connection with a specific hazard is a factual matter which can be decided only by considering all the facts and circumstances surrounding the alleged violation. The general guidelines proposed in this notice are not intended, and cannot be used, as evidence of the appropriate level of training in litigation involving either the training requirements of OSHA standards or affirmative defenses based upon employer training programs.

The steps in the development and presentation of training programs to teach employees how to recognize, avoid and prevent unsafe and unhealthful conditions at their worksites are no different than the steps involved in the development and presentation of training programs designed to teach other subjects. What is different is the content of the training program. Even here, however, it is important to realize that information on occupational safety and health is best taught when it is integrated into other subject matter at the time that subject matter is taught to the individual, such as when demonstrating machine operation. Health and safety education is not as effective when presented as a separate subject, or as a separate increment of instruction.

The description of the training process below is applicable to any kind of training, including teaching for the recognition, avoidance and prevention of unsafe and unhealthful conditions at the worksite.

The guidelines contained below are voluntary in nature. It is not OSHA's intention that they become the basis for mandatory requirements for employers.

OSHA proposes training guidelines in the form of a model that would consist of:

- A. Identifying Training Needs
- B. Determining the Content
- C. Preparing Instructional Objectives

D. Developing Learning Activities
E. Conducting the Training
F. Evaluating Program Effectiveness
G. Improving the Program

The model is designed to be one that even the owner of a business with very few employees can use without having to hire a professional trainer or purchase expensive training materials. Using this model, employers can develop and administer safety and health training programs that address problems specific to their own businesses and fulfill the learning needs of their own employees.

A. Identifying Training Needs. The first step in the training process is a very basic one: to determine whether a problem can be solved by training. Whenever employees are not performing their jobs properly, it is very often assumed that training will bring them up to standard. The underlying assumption is that if employees knew better, they would perform better. This is not always true. Gilbert (18) found that over half the deficiencies that employees exhibit on the job are deficiencies in execution, not deficiencies in knowledge. To distinguish between the two, Gilbert suggests that people thinking about developing a training program ask this question: "Could this person (in this context, the employee) perform correctly if his or her life depended on it?" If the answer is "Yes," then the person has the necessary competence, and the problem is a deficiency in execution.

Faulty execution is due not to a lack of training, but to other causes, such as *inadequate supervision or feedback*, where the employee lacks an understanding of the results or the value of his work; *task interference*, where other demands, such as personal problems, daydreaming or even telephone calls, compete for the employee's attention; *punishment*, where the desired performance involves tasks that are perceived by the individual as grueling, arduous, oppressive, or otherwise punishing; or *lack of motivation*, where ambition was never developed, or was discouraged. All of these deficiencies of execution must be handled with remedies other than training. The employer should train only for deficiencies in knowledge.

B. Determining the Content. If the problem is one that can be solved, in whole or in part, by training, the next step is to determine what training is needed. For this, it is necessary to find out what the required performance is and in what way, if any, the individual is deficient. In other words, it is necessary to conduct a job analysis.

When designing a new training program, or preparing to instruct an

employee in an entirely unfamiliar procedure or system, a job analysis can be developed by doing research in the engineering data or procedural publications on the new equipment, procedures or materials, or by consulting with designers, engineers, or technicians who planned and developed the system. The content of the specific OSHA standards applicable to a business can also provide direction in developing training content. Another option is to use a Task Analysis Inventory. (19) These Inventories provide a tool for identifying significant tasks and employee requirements for each. Data in these Inventories were obtained from job analyses, occupational literature, professional associations, trade unions, government agencies, and private organizations and establishments. The actual inventory is a comprehensive list of the activities in a designated area. The user, after considering all of the items listed, can determine those that are applicable for training purposes. The Department of Labor has developed Inventories for 22 different areas of work, such as Inspecting and Testing, Mechanical Repairing, and Merchandising.

If the employee's learning needs can be met by revising an existing training program rather than developing a new one, or if the employee already has some knowledge of the process or system to be used, the job analysis might include:

(1) *An occupational survey*—obtaining a representative sample of job-holders, their background data, and specific information on the duties and tasks that they perform;

(2) *A questionnaire*—requesting employees to provide, in writing and in their own words, background information and descriptions of their jobs, including the tasks performed and the tools, materials and equipment used;

(3) *A checklist*—a listing of duties and tasks, believed to describe the job requirements (based on specialty description, instructional standards, job proficiency guides, etc.) on which employees select or identify the tasks performed;

(4) *An individual interview*—selecting and interviewing a number of representative employees concerning their tasks and duties; and

(5) *An observation interview*—interviewing employees at the worksite as they perform tasks, asking about the work and recording their answers.

The employees themselves can provide valuable information on the training they need. Safety hazards can be identified through the employees' responses to such questions as:

1. Is there something about my job that frightens me?
2. Do my co-workers perform tasks that appear dangerous to me?
3. Have I ever had any injuries, or near misses that could have injured me?
4. Have I ever changed a procedure to avoid a potential injury?
5. Do I take risks I feel are part of the job?
6. Have I ever asked for help when I felt a job was unsafe to perform alone?
7. Have I ever refused to perform an assigned task because I felt it was hazardous? (20)

NIOSH suggests that employees concerned with possible health hazards answer these questions:

1. Are any substances used in this plant known to be harmful to health?
 2. Are trade name products used without full knowledge of what is in them?
 3. Does the job require contact with mists, vapors, dusts, gases or fumes that are potentially harmful?
- Once the kind of training that is needed has been determined, it is equally important to determine what kind of training is *not* needed. Using the information from the job analyses described above, divide the body of required tasks and duties into component parts. Then remove from the list any increments of information, knowledge or skills in which the individual is not deficient. The employer must decide what not to teach, as well as what to teach. Limiting the list to deficiencies allows the employer to omit all instruction on skills and knowledge that the individual already knows, while including instruction on all the needed knowledge and skills.

C. Preparing Instructional Objectives. Given a list of specific deficiencies of the employees selected for training, the employer can then prepare instructional objectives. Instructional objectives, if properly stated, will tell employers what they want their employees to do, to do better, or to stop doing.

An effective, meaningful instructional objective should meet three criteria, namely:

- (1) It should identify as precisely as possible what the individual will be doing to demonstrate that the objective has been reached;
- (2) It should describe the important conditions under which the individual must demonstrate competence (including restrictions on the performance, or any information or materials given, or both); and
- (3) It should define the criteria or standards of acceptable performance expected of each employee. (21)

Using specific, action-oriented language, instructional objectives should describe the preferred practice or skill and its observable behavior. For example, rather than using the statement: "The employee will develop a critical understanding of the respirator" as an instructional objective, it would be better to use: "The employee will be able to identify, by name and function, each separate component of the respirator." Instructional objectives should be written in such a way as to provide enough detail so that other qualified persons can recognize the described behavior and not mistake it for any other behavior. Finally, the employer should prepare a separate statement for each objective—the more statements the employer provides, the better the chance of making clear the intent.

D. Developing Learning Activities. Once the employer has stated precisely what the objectives for the training program are, learning activities must be identified and described. Learning activities enable employees to demonstrate that they have acquired the desired skills and knowledge. To ensure that the employee transfers the skills or knowledge from the learning activity to the job, the learning situation must simulate the actual job as closely as possible. Thus, the employer may want to arrange the objectives in a sequence which corresponds to the order in which the tasks are to be performed on the job, if a specific process is to be learned. For instance, if the employee must learn how to begin to use a machine, the sequence might be: (1) To learn to check that the power source is connected; (2) to learn to ensure that all safety devices are in place and are operative; (3) to learn when and how to throw the POWER ON switch; and so on.

A few factors will help to determine the type of learning activity to be incorporated into the training. One is the training resources available to the employer. Another is the kind of skills or knowledge to be learned. Is the learning oriented toward physical skills (such as the use of special tools) or toward mental processes, involving language or abstract concepts? Such factors will influence the type of learning activity designed by the employer. The training activity can be group-oriented, with lectures, role play, and demonstrations; or student-centered as with self-paced instruction. The determination of methods and materials for the learning activity can be as varied as the employer's imagination and available resources will allow. The employer may want to use charts, diagrams, manuals,

slides, films, transparencies, videotapes, audiotapes, or simply blackboard and chalk, or any combination of these and other instructional aids. It is important to note that the learning activities should be identified and described in such a way that, upon the employees having completed the activities, the employer will be able to observe whether the employee has acquired the desired skills or knowledge.

E. Conducting the Training. With the completion of the steps outlined above, the employer is ready to begin conducting the training. As far as possible, the training should be presented in such a way that its organization and meaning are clear to the employee. To do so, the employer should: (1) Provide overviews of the material to be learned; (2) relate each specific item of knowledge or skill to the ultimate purpose of the training (i.e., achieving the program's objective); (3) relate, wherever possible, the specific items of knowledge or skill to the employee's goals, interests, or experience. These steps will assist the employer in presenting the training in a clear, unambiguous manner.

Once the employer has studied the equipment and the tasks involved in certain jobs, the employer is now in a good position to determine the structure of the training session. The content developed for the program, the nature of the workplace or other training site, and the resources available for training will help employers determine for themselves the frequency of training activities, the length of the sessions, the instructional techniques, and the individual(s) best qualified to present the information.

In order to motivate employees to pay attention and learn the material that the employer is presenting, they must be assured as to what material is important and why. Among the ways of developing motivation are: (1) Explaining to the employee the objectives—the goals of instruction; (2) asking questions or giving a short quiz before beginning the training session (to alert employees that their learning will be evaluated); (3) explaining to the employees that they will be tested following completion of the training session; (4) previewing the main points to be presented during the training session(s); and (5) pointing out the benefits of the training (e.g., the employee will be better informed and more skilled and thus more valuable both on the job and on the labor market; or the employee will, if he or she applies the skills and knowledge learned, be able to work at reduced risk).

An effective training program allows employees to participate in the training process and to practice their skills or knowledge. This will help to ensure that they are learning the required knowledge or skills, and permit correction if not. Among the ways that employees can become involved in the training process are by participating in discussions, asking questions, contributing their knowledge and expertise, learning through hands-on experiences, and through role-playing exercises.

F. Evaluating Program Effectiveness. To make sure that the training program is accomplishing its goals, it is necessary to perform an evaluation. Training has to have, as one of its critical components, a method of measuring the effectiveness of the training. A plan for evaluating the training session(s) should be designed at the time the course materials are developed. It should not wait until the training has been completed. Evaluation will help the employer to determine the amount of learning achieved and whether performance has improved on the job. Among the methods of evaluating training are: (1) *Tests.* Tests in training situations can be used to monitor the quality of the program, to diagnose instructional difficulties, and to permit a ranking of employees according to accomplishment; (2) *Student opinion.* Questionnaires or informal interviews with employees can help the employer determine the acceptability and relevance of the training program; and (3) *Supervisor's rating.* Supervisors, who are in good positions to observe an employee's performance both before and after the training, can rate the "graduates."

Evaluation of training is essentially a subjective process. The employer can use both "hard data" such as test scores, and "soft data" such as employee feedback to determine the value of the program. Each kind of data is valuable in deciding whether or not the employees achieved the desired results, and whether the training session should be offered again at some future date.

G. Improving the Program. If, after evaluation, it is evident that a significant number of employees did not meet the level of knowledge and skill that was expected, then it is necessary to revise the training program. At this point, asking questions of employees and of administrators of the training may be of some help. Among the questions that could be asked are: (1) What material in the program was already known and, therefore, unnecessary? (2) What material was

confusing or distracting? (3) What material was missing? (4) What did the employees learn, and what did they fail to learn?

It may be necessary to repeat steps in the training process, i.e., to return to the first steps and retrace one's way through the training process. As the program is evaluated, the employer should ask: (1) Was the job analysis accurate? (2) Was any critical feature of the job overlooked? (3) Were all deficiencies of knowledge and skill included? (4) Was material already known by the employee omitted? (5) Were the instructional objectives stated clearly and concretely? (6) Did the instructional objectives state the standards of acceptable performance that were expected of the employee? (7) Did the learning activity simulate the actual jobs? (8) Was the learning activity appropriate for the kinds of knowledge and skills required on the job? (9) When the training was presented, was the organization of the material and its meaning made clear? (10) Was the proper motivation provided? (11) Was the employee allowed to participate actively in the training process? (12) Was the employer's evaluation of the program thorough?

A critical examination of the steps in the training process will help the employer to determine where course revision is necessary.

III. Matching Training to Employees

While all employees are entitled to know as much as possible about the safety and health hazards to which they are exposed, and employers should attempt to provide all relevant information and instruction to all employees, the resources for such an effort frequently are not, or are not believed to be, available. Thus, it becomes necessary for the employer to decide who is in the greatest need of information and instruction.

One way to differentiate between employees who need training and those who do not is to identify employee populations that are at higher levels of risk. The nature of their work indicates that they should receive priority for information on occupational safety and health risks.

A. Identifying Employees at Risk. One method of identifying employee populations at high levels of occupational risk (and thus in greater need of safety and health training) is to pinpoint hazardous occupations. A comprehensive list of specifically defined hazardous-type occupations, grouped by industry, has been compiled by the U.S. Employment Service (USES) of the Department of Labor. Based on

the presence of at least one of the three environmental criteria or factors (noise and/or vibration, physical hazards, and unsatisfactory atmospheric conditions affecting the respiratory system and the skin), the *Handbook for Analyzing Jobs* (22) lists and defines 5,174 occupational titles as being in a variable risk category. Of these, 3,559 occupations (69 percent) were marked for the presence of one environmental condition, 1,260 (24 percent) for two of these conditions, and 335 (7 percent) for all three conditions present. A general laborer in the iron and steel industry, for example, is cited as an occupation considered hazardous with regard to all three environmental factors. In the Department of Labor's *Dictionary of Occupational Titles* (23) which incorporates about 75,000 on-site analyses, USES job analysts rate jobs according to the following seven environmental conditions:

1. Whether the work is performed inside, outside, or both.
2. Extreme cold, with or without temperature changes.
3. Extreme heat, with or without temperature changes.
4. Wet and/or humid conditions.
5. Noise and/or vibration.
6. Hazards, i.e., physical (safety) hazards.
7. Atmospheric conditions.

In this case a general laborer in the iron and steel industry is classified as working both inside and outside, in an environment where there may be conditions of extreme heat, with or without temperature changes, wet and/or humid conditions, noise and/or vibration, physical (safety) hazards, and atmospheric conditions which could affect the respiratory system and skin. This employee's higher level of risk, the variety of tasks performed and the variance in working conditions clearly indicate a great need for occupational safety and health training.

A second method of identifying employee populations at high levels of risk is through relating injury incidence and employment by occupation. The Bureau of Labor Statistics of the U.S. Department of Labor has developed a technique to compare the number of injuries incurred by employees in an occupation to the total number of employees in that population. (24) This figure indicates whether the injury rate for that occupation is higher or lower than might be expected for the size of the population.

In summary, information is readily available to help the employer identify which employees should receive safety and health information, education and training, and who should receive it

before others. In addition, research has identified the following variables as being related to a disproportionate share of injuries and illnesses at the worksite on the part of employees:

1. The age of the employee (younger employees have higher incidence rates).
2. The length of time on the job (new employees have higher incidence rates).
3. The size of the firm (in general terms, medium-size firms have higher incidence rates than smaller or larger firms).
4. The type of work performed (incidence and severity rates vary significantly by Standard Industrial Classification (SIC) Code, used to classify businesses by the nature of work performed therein).
5. The use of hazardous substances (by SIC code).

These variables should be considered when identifying employee groups for training in occupational safety and health.

B. Training Employees at Risk. Determining the content of training for employee populations at higher levels of risk is similar to determining what any employee needs to know, but more emphasis is placed on the requirements of the job and the possibility of injury, rather than on other contributing factors such as the literature from regulatory bodies or new product information.

One excellent tool for determining training content from job requirements is the Task Analysis Inventory described earlier. These Inventories provide a mechanism for identifying the significant tasks of a job and employee requirements for each. Data in these Inventories were obtained from job analyses, occupational literature, professional associations, trade unions, government agencies, and private organizations and establishments. (19)

Still another tool, the application of which has proven highly successful in reducing both the frequency and severity of injuries and illnesses, is the Job Safety and Health Hazard Analysis. This is a procedure for studying and recording each step of a job, identifying existing or potential hazards, and determining the best way to perform the job to reduce or eliminate the hazards. Its key elements are: (1) job description; (2) job location; (3) key steps (preferably in the order in which they are to be performed); (4) tools, machines and materials used; (5) actual and potential safety and health hazards associated with these key job steps; and (6) safe and healthful practices, apparel and equipment required for each job step. (25, 26)

Material Safety Data Sheets can also provide information for training employees in safe materials use. These data sheets, supplied along with manufacturing or construction materials, describe the ingredients of a product, its hazards, protective equipment to be used, safe handling procedures, and emergency first aid responses. The information contained in these sheets can assist the employer in identifying employees in need of training (i.e., workers handling substances described in the sheets) and in training the employees in safe use of the substance. Material Safety Data Sheets are generally available from suppliers, manufacturers of the substance, large employers who use the substance on a regular basis, or can be developed by employers or trade associations.

IV. Conclusion

In an attempt to assist employers with their occupational health and safety training activities, OSHA has proposed a set of training guidelines in the form of a model. This model is designed to help employers develop instructional programs as part of their total education and training effort. The model addresses the questions of who should be trained, on what topics, and for what purposes. It also helps the employer determine how effective the program has been, and enables the employer to identify employees in greatest need of education and training. The model is general enough to be used in any area of occupational safety and health training, and allows employers to determine the content and format of training for themselves. Use of this model in training activities is just one of the many ways that employers can comply with the OSHA standards that relate to training.

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VII. Public Participation

Interested persons are invited to submit written data, views and information with respect to these proposed training guidelines. Written comments must be received by September 29, 1983, and submitted in quadruplicate to the Docket Officer, Docket No. T-100, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Written submissions must clearly identify the issues and areas which are addressed and the position taken with respect to each issue and area.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 24th day of August 1983.

Thorne G. Auchter,
Assistant Secretary of Labor.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13457; (812-5546)]

The Equity Income Fund, S&P 500 Index, First Monthly Payment Series and Subsequent Series, et al., c/o Merrill Lynch, Pierce, Fenner & Smith Inc.; Application for Order

August 23, 1983.

Notice is hereby given that The Equity Income Fund, S&P 500 Index, First Monthly Payment Series and Subsequent Series ("Fund"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"); and its depositors, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Dean Witter Reynolds Inc., Prudential-Bache Securities Inc. and Shearson/American Express Inc. ("Sponsors") (together, "Applicants"), One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on May 17, 1983 requesting an order pursuant to Section 6(c) of the Act exempting the Fund from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit the Fund to acquire the securities of any broker, dealer, underwriter, or investment adviser, provided that (1) such securities are included in the Standard & Poor's 500 Composite Stock Price Index ("S&P Index") and (2) the percentage of the Fund's assets to be invested in any such security is approximately the same as the percentage such securities represent in the S&P Index. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions to which the application applies.

Applicants represent that as an "index fund", the Fund's investment objective is to produce investment results which correlate with the performance (including dividend income and capital changes) of common stocks in the aggregate—in this case, the S&P Index. The Fund seeks to attain this objective by holding as many of the 500 stocks contained in the S&P Index as is feasible, in substantially the same proportions as the weightings accorded each stock in the S&P Index, it is stated. Applicants further state that the S&P Index is composed of 500 selected common stocks, most of which are listed on the New York Stock Exchange, and which are designated by Standard & Poor's Corporation solely on a statistical basis. Applicants further state that the weightings given the stocks in the S&P Index are based upon each stock's

relative total market value, i.e., its market price per share multiplied by the number of shares outstanding. Thus, Applicants state, the percentage of the Fund's assets allocated to each issue will be approximately the same as its weighting in the S&P Index. Applicants represent that the Fund is neither sponsored by, nor affiliated with, Standard & Poor's Corporation.

It is stated further that no attempt will be made to "manage" the Fund's portfolio and that the Fund will have no investment adviser and will pay no advisory fee. The adverse financial condition of an issuer. Applicants also state, will not necessarily result in its removal from the Fund's portfolio: only in the event that the issuer itself is removed from the S&P Index will that company's stock also be removed from the Fund's portfolio. It is further stated that from time to time adjustments will be made in the Fund's portfolio, in accordance with changes made in the composition of the S&P Index.

Section 12(d)(3) of the Act, in pertinent part, prohibits any registered investment company from purchasing or otherwise acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is an investment adviser. Applicants state that as of May 12, 1983, the S&P Index included the common stocks of Merrill Lynch & Co., Inc. ("Merrill Lynch"), American Express Company ("American Express") and Phibro-Salomon Inc. ("Phibro"), each of which, through subsidiaries acts as a broker, dealer, underwriter and an investment adviser. Therefore, it is stated, without an exemption from Section 12(d)(3) of the Act, the Fund would be unable to purchase the securities of Merrill Lynch, American Express, or Phibro, or the securities of any other broker, dealer, underwriter, or investment adviser which may in the future be included in the S&P Index. Applicants thus assert that the Fund would be precluded from investing its assets in a manner consistent with the composition and weightings of the S&P Index. Applicants submit that this prohibition is unnecessary in the Fund's case and unreasonably impedes its efforts to achieve investment results which duplicate those of the S&P Index. This deviation, it is further asserted, could become material in view of the fact that the common stock of Merrill Lynch, American Express and Phibro is each ranked among the leading 250 securities included in the S&P Index. It is further stated that the current restructuring of the financial services

marketplace, involving the entry into the brokerage and advisory field of companies not previously engaged in such activities, raises the possibility that the prohibition of Section 12(d)(3), as applied to the Fund, could exacerbate the divergence which Applicants fear, from the realization of the stated objectives of the Fund.

Applicants further assert that the foundation for the prohibitions set forth in Section 12(d)(3) of the Act, is, in part, to be found in Section 1(b)(2) of the Act, which, in pertinent part, states that the national public interest and the interest of investors are adversely affected when the portfolio securities of investment companies are selected in the interests of brokers, dealers, underwriters, or investment advisers, rather than in the interests of investment company shareholders. Applicants contend in addition, that the Commission has articulated positions through its staff indicating that the historic dependence by investment companies upon the efforts of broker-dealers for the distribution of their shares gave rise to three specific abuses which Section 12(d)(3) may in particular be designed to correct: first, the tendency which investment company managers may have to invest fund assets in the securities of a particular broker-dealer in order to secure such firm's efforts in the distribution of the shares of the fund; second, the predisposition upon the part of a broker-dealer to recommend to its customers the shares of investment companies which have invested in the broker-dealer; and third, the inclination on the part of an investment company's managers to allocate brokerage to broker-dealers the securities of which the fund holds merely in order to preserve or enhance the fund's investment in the broker-dealer rather than to obtain the superior quality of that firm's services.

Applicants maintain that the Fund's acquisition of the securities of brokers, dealers, underwriters, or investment advisers included in the S&P Index is unlikely to affect the conduct of the Fund's policies or business affairs. Applicants note that the Fund has no significant discretion to acquire ownership of any security listed in the S&P Index, and that therefore the Fund has no means of using its assets to affect a greater extent than it would have with regard to any other security in the S&P Index. It is asserted, in addition, that the degree to which any individual issue of the S&P Index may be represented in the Fund's portfolio, and the magnitude of the largest companies in the S&P Index, render *de minimis* the possibility that

the assets of the Fund could be utilized to manipulate the value of securities in the S&P Index. In this regard, Applicants note that after the public offering of interests in the Fund, it is anticipated that the Fund will have invested in all 500 companies in the S&P Index. If the S&P Index retains its present composition, it is stated, each issuer would individually represent less than 0.5% of the net assets of the Fund. Moreover, it is noted that at May 12, 1983, the securities of only the three largest issuers in the S&P Index (i.e. International Business Machines Corp., American Telephone and Telegraph Co. and Exxon Corp.), which in the aggregate constituted approximately 13% of the net assets of the S&P Index, exceeded, on an individual basis, 2.5% the aggregate value of the S&P Index; conversely, because these companies are so large, it would be futile for the Fund to attempt to influence the business affairs of such entities through use of Fund assets. Applicants also contend that a broker-dealer the securities of which are included in the S&P Index would not be improperly influenced to recommend purchase of the Fund's securities by reason of the Fund's investment in the S&P Index because the extent to which the stock of such a broker-dealer would be present in the Fund's portfolio will depend entirely upon the independently-determined composition of the S&P Index. This factor, Applicants state, makes it impossible for a broker-dealer to bring about the acquisition by the Fund of a disproportionate amount of the broker-dealer's stock promotion of the sale of the Fund's securities.

Finally, Applicants state that the Fund will not be subjected to a conflict of interest through the acquisition of the stock of a broker, dealer, underwriter, or investment adviser included in the S&P Index, because such acquisition will be predicated solely upon the composition of the S&P Index, rather than upon the discretion of those directing the operations of the Fund. Therefore, Applicants believe, the prophylactic provisions of Section 12(d)(3) of the Act are not needed for the protection of investors under the terms of the Fund's proposed investment policy.

Notice is further given that any interested person wishing to request a hearing on the applicant may, not later than September 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission,

Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-23829 Filed 8-29-83; 8:45 am]

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[Release No. 13458; (812-5564)]

The Equity Income Fund, S&P 500 Index, First Monthly Payment Series and Subsequent Series; et al., c/o Merrill Lynch, Pierce, Fenner & Smith Inc.; Application for Order

August 23, 1983.

Notice is hereby given that the Equity Income Fund, S&P 500 Index, First Monthly Payment Series and Subsequent Series ("Fund") (each series individually and all Series collectively are referred to hereinafter as "Series"), a series of unit investment trusts organized under the laws of the State of New York and registered, or to be registered, under the Investment Company Act of 1940 ("Act"); and the depositors of the Fund, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Dean Witter Reynolds Inc., Prudential-Bache Securities Inc. and Shearson/American Express Inc. ("Sponsors") (together with Fund, "Applicants"), One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on June 2, 1983, for an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act to permit the sale of units of fractional undivided interest ("Units") in the Fund in accordance with the terms of a proposed reinvestment plan ("Reinvestment Plan"), as described herein. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for a text of the provisions to which the application applies.

Applicants state that each Series is or will be created by a separate trust indenture among the Sponsors and a trustee ("Trustee") meeting the qualifications of Section 26(a) of the Act.

Applicants further state that each Series will have as its investment objective the attainment of results that generally correspond to the price and yield performance of the Standard & Poor's 500 Stock Price Composite Index ("Index"). It is stated that the Sponsors will initially deposit in 100 share lots approximately \$10,000,000 of common stocks that are included in the Index, in substantially the same proportions as represented in the Index, with the Trustee, and will receive in exchange certificates representing ownership of all of the Units of the Series so created. The indenture will permit the Sponsors to make subsequent deposits of common stock with the Trustee in exchange for additional Units, it is stated, in each case maintaining as closely as practicable the same proportionate relationship among the common stocks in the Series as their relative weightings in the Index. Upon the effectiveness of the Fund's registration statement on Form S-6 under the Securities Act of 1933, pertaining to a particular Series, Applicants state, the Units of that Series will be offered by the Sponsors to the public at the current public offering price, which will include a 3.90% sales charge.

Applicants state that holders of Units ("Unitholders"), by participating in the Reinvestment Plan, could have their income reinvested in additional Units of the same or a different Series of the Fund, at a sales charge reduced from that imposed upon an initial public offering of Units. Applicants state that a Unitholder would be entitled to reinvest either dividends or capital gains, or both, but that his election would be deemed to apply to all of the Units of a particular Series, as well as to any Units he may have acquired pursuant to the Reinvestment Plan.

Applicants represent, in addition, that it is contemplated that from time to time, the Sponsors may discontinue the offering of Units of a Series, and commence the offering of another Series ("Subsequent Series"). A Subsequent Series, it is stated, would become effective at least 20 days prior to the record date for the first distribution to be reinvested therein, and promptly following such effectiveness, each participating Unitholder of a previous Series would be provided with a prospectus of the Subsequent Series ("Reinvestment Series"). The Sponsors anticipate that newly-issued Units of a Reinvestment Series would be available on each distribution date. Applicants state. In any event, it is stated, the Sponsors presently intend to maintain a secondary market for Units of each

Series, although they are not obligated to do so. Accordingly, if at any time the Sponsors decide that it is inadvisable to offer newly-issued Units of a Reinvestment Series, or if for any other reason an insufficient number of newly-issued Units are available for purposes of the Reinvestment Plan, the Trustee would purchase outstanding Units of one or more previous Series of the Fund with amounts in the accounts of Unitholders. Applicants state that such previously issued Units would have been offered to the Trustee by the Sponsors from among the Units acquired by them in the secondary market, and would not be Units which had remained unsold from the original distribution thereof.

Applicants note that although the composition or portfolios of the Series of the Fund may be expected to vary to some extent, all Series will have the same investment objective, and all will be subject to adjustment from time to time to reflect changes which occur in the weightings or composition of the Index. Therefore, it is stated, it is not expected that any Series will be materially different from any other Series of the Fund.

Applicants submit that because the broker will already have made the initial customer solicitation, ascertained the customer's financial needs, and counseled him on the general attributes of the applicable Series, it is appropriate that the sales load levied upon the purchase of Units under the Reinvestment Plan be reduced from 3.90%, the amount charged on initial (and certain subsequent) distributions of Units, to 2.90%.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-23820 Filed 8-29-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 20104; (SR-NYSE-83-26)]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 23, 1983.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, submitted on July 14, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to designate NYSE Composite Index options for trading on a February-May-August-November expiration cycle.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19976, July 15, 1983) and by publication in the Federal Register (48 FR 33392, July 21, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-23820 Filed 8-29-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13455; (811-3560)]

The Territorial Money Market Fund; Filing of Application

August 23, 1983.

Notice is hereby given that The Territorial Money Market Fund ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on June 2, 1983, for an order of the Commission

pursuant to section 8(f) of the Act, declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for a statement of its relevant provisions.

Applicant states that its registration under the Act on Form N-8A was filed on August 31, 1982. Its registration statement on Form N-1 pursuant to the Securities Act of 1933 was filed on the same day, but was never declared effective, and no public offering of its securities has taken place. Applicant states that it was dissolved on May 12, 1983, pursuant to its Declaration of Trust and applicable state law.

The application also states that Applicant has no assets and no shareholders, is not a party to any litigation or administrative proceedings, and is not engaged in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-23827 Filed 6-29-83; 8:45 am]

BILLING CODE 8010-02-M

[Release No. 13459; (812-5588)]

World of Technology, Inc. and Financial Programs, Inc.; Application for an Order

August 23, 1983.

Notice is hereby given that World of Technology, Inc. ("Fund"), 7503 Marin Drive, Englewood, Colorado 80111, registered under the Investment

Company Act of 1940 ("Act") as a diversified, open end, management investment company, and Financial Programs, Inc. ("Programs"), the Fund's principal underwriter (Collectively, the "Applicants"), filed an application on June 29, 1983, and amendments thereto on August 10 and 18, 1983, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants: (1) from the provisions of Section 22(d) of the Act to permit sales of Fund shares to Britannia World of Technology Fund ("Trust"), an open-end, limited liability investment company to be organized under the laws of Jersey, Channel Islands, at net asset value (without any sales charge), and (2) from the provisions of Sections 12(d)(1) (A) and (B) of the Act to permit sales of Fund shares to the Trust in amounts exceeding the limits set forth in those provisions. All interested persons are referred to the application on file with the commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for further information as to the provisions to which the exemptions apply.

The Fund seeks long-term capital appreciation and invests, primarily, in the equity securities of domestic and foreign high-technology companies. Shares of the Fund are sold in the United States by Programs, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"). Programs is a wholly-owned subsidiary of Britannia Holdings, Inc., which in turn is a wholly-owned subsidiary of Britannia Arrow Holdings PLC ("Britannia"), a financial holding company and a United Kingdom public corporation. Programs and Britannia International Asset Management Limited ("Asset Management", a wholly-owned subsidiary of Britannia), both registered with the Commission as investment advisers, serve as investment advisers to the Fund. Britannia International Investment Management Limited ("Britannia International"), a wholly-owned subsidiary of Britannia, manages the assets of 15 Jersey mutual funds and distributes investment company shares. The Trust will compensate Britannia International for various administrative services provided to the Trust and its shareholders, including purchasing Fund shares from Programs and managing uninvested cash.

Because the sale of Fund shares to the Trust at no load would represent a sale at other than the offering price described in the Fund's prospectus, Applicants request exemption from Section 22(d) of the Act. The Fund sells

its shares with a sales charge ranging from 5% for purchases less than \$30,000 to 1% for purchases of \$100,000 or more. The offering price of units of the Trust will include a flat sales charge of 5.25% of the net amount invested (Trust shares will be sold to investors worldwide but will not be sold in the United States or to United States nationals). Applicants assert that if the Trust were required to pay a sales load on its purchases of Fund shares, Trust shareholders would pay two sales charges even though no selling effort was associated with sales of Fund shares to the Trust. From the Fund's perspective, bulk sales of its shares to only one shareholder (the Trust) would involve little or no distribution effort, minimal administrative expenses, and would help the Fund achieve certain economies of scale. Applicants contend that the public policy reasons underlying Rule 22d-1(g) support their exemptive request, and assert that they based their decision to sell Fund shares to the Trust without a sales charge on the best interests on the Fund and its shareholders. Applicants submit that their proposal would not unfairly discriminate against Fund investors required to pay sales charges.

Applicants request exemption from Section 12(d)(1) (A) and (B) of the Act, contending that the Trust's operation does not create the problems that Sections 12(d)(1) (A) and (B) are meant to ameliorate. Applicants submit that their proposal would not result in layering of costs, substantial redemptions that might disrupt the orderly management of the Fund, or the undue concentration of control over U.S. investment companies by investment company holding companies. But for Section 12(d)(1)(E)(i), Applicants assert they would not need exemption from Section 12(d)(1) (A) and (B) because they could rely on the exclusion provided by Section 12(d)(1)(E).

Applicants argue that an analysis of the Exchange Act's applicability to their situation supports their request for exemption from Section 12(d)(1)(E)(i). Applicants assert that Section 12(d)(1)(E)(i) insures that the Commission has administrative recourse under the Exchange Act against principal underwriters of fund holding companies. Applicants contend that such recourse remains where the principal underwriter is a foreign dealer under common control with a registered broker-dealer (Programs). Applicants state that Section 15(b)(4) of the Exchange Act allows the Commission to institute a remedial administrative proceeding against a broker or dealer if

a person associated with such broker or dealer has engaged in any of the prohibited acts set forth in that section (including any willful violation of any provision of the Act). Applicants note that Section 15(b)(6) of the Exchange Act authorizes similar Commission action directly against any person associated with a broker or dealer if such associated person has engaged in certain prohibited conduct (or aided or abetted such conduct, including any willful violation of any provision of the Act). Section 3(a)(18) of the Exchange Act defines a "person associated with a broker or dealer" as, among other things, any person directly or indirectly controlling or controlled or under common control with such broker or dealer. "Person", as defined by Section 3(a)(9) of the Exchange Act, includes a company. Under these provisions, Applicants assert both Britannia (parent of Programs and Britannia International) and Britannia International (the foreign underwriter) would be deemed to be "persons associated with a broker or dealer". Applicants conclude that the Commission's authority under Sections 15(b) (4) and (6) of the Exchange Act is equivalent to the situation that would exist if programs controlled the Trust's principal underwriter.

As for the purpose behind Section 12(d)(1)(E)(i), Applicants argue that it is of no regulatory consequence that Britannia, rather than Programs, controls the Trust's principal underwriter. Applicants assert that, in supervising Britannia International, Britannia cannot avoid the reality that its actions in that regard will affect the Fund, to whom it has fiduciary responsibilities resulting from its control of Programs. Because shares of the Trust will be underwritten by an entity under common control with the investment advisers and principal underwriter of the Fund, Applicants state that the Trust's underwriter would not act, or cause the Trust to act, in a manner disruptive to the Fund's operations. Applicants assert that strict adherence to Sections 12(d)(1)(E)(i) would serve no regulatory purpose, but would involve considerable expense and administrative burdens. Applicants thus seek exemption from Section 12(d)(1) (A) and (B) of the Act, subject to compliance by them and the Trust with all conditions of Section 12(d)(1)(E), except that condition set forth in Section 12(d)(1)(E)(i), and subject to the requirement that the principal underwriters of the Fund and the Trust remain under common control.

Notice is further given that any interested person wishing to request a hearing on the application may, not later

than September 14, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-23831 Filed 8-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20108; File No. SR-OCC-83-18]

Filing of Proposed Rule Change by the Options Clearing Corp.

August 23, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1983, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend Sections 13 and 23 of OCC's Restated Participant Exchange Agreement ("Agreement") with the several options exchanges ("participant exchanges").¹ Under the proposal, Section 13 would be amended to require each participant exchange, in certain stated circumstances that indicate a deterioration in the financial condition of an OCC clearing member, to notify OCC immediately by telephone when the participant exchange determines that those circumstances exist and to

¹ OCC is requesting accelerated approval by the Commission of the proposed rule change under Section 19(b)(2) of the Act to ensure that the rule change is in place prior to the New York Stock Exchange, Inc. ("NYSE") becoming a participant exchange on September 23, 1983. The proposal should enhance significantly OCC's ability to monitor the operational and financial condition of its clearing members because the NYSE as a participant exchange would be required to furnish OCC with detailed financial and operational surveillance information.

keep OCC reasonably informed of the results of the exchange's surveillance activities. In addition, each participant exchange would be required to furnish to OCC copies of all written materials relating to the OCC clearing member's financial condition that the participant exchange receives. The receiving exchange would need to furnish those copies to OCC by 2:00 p.m. on the day after the exchange's receipt of the written materials. OCC, in any event, could request that the documents be made available for pick-up contemporaneously with their receipt by the participant exchange. Finally, proposed Section 13 would require participant exchanges to advise OCC of the reasons for, and purposes of, such meeting by telephone and in advance of any meeting that relates to a clearing member. At the end of the meeting, the participant exchange would need to notify OCC by telephone of any conclusion reached and the reasons therefor. Currently, the Agreement only provides that each participant exchange must notify OCC promptly of its determination that one of the stated circumstances exists and must keep OCC reasonably informed of the results of the exchange's surveillance activities.

The proposal also would amend in several ways Section 23 of the Agreement, which relates to indemnification of OCC and the participant exchanges. Under proposed Section 23, OCC or a participating exchange would be indemnified by one or more of the other parties to the Agreement, as appropriate, if it suffers a loss directly (as opposed to a loss arising from liability to a third party to the Agreement) from a breach of the Agreement or the Stockholder's Agreement (OCC is owned jointly by the options exchanges). For example, OCC would not be indemnified by a participant exchange if OCC suffers a direct loss from the failure of that exchange to enforce adequately its financial compliance standards; OCC, however, would be indemnified by the participant exchange if the exchange failed to provide OCC with the information required under proposed Section 13. Currently, the indemnification provisions of Section 23 are broader because all parties to the Agreement are indemnified reciprocally not only for losses arising from breaches of the Agreement and the Stockholder's Agreement, but also for losses arising from violations of: (1) the Act and any rule thereunder, (2) state securities laws, fraud statutes and similar laws, or (3) the rules of the participant exchange or OCC. Proposed Section 23 would

continue the current reciprocal indemnification provisions in all five situations if the loss is indirect, i.e., to a third party to the Agreement. Finally, the proposal clarifies that OCC will be deemed to suffer a loss even if the amount of the loss can be satisfied through *pro rata* assessments of OCC clearing members' contributions to OCC's Stock or Non-Equity Clearing Funds.

OCC believes that the proposed changes to Section 13, among other things, will strengthen OCC's ability to protect itself and its clearing members from financial exposure from financially troubled clearing members. Under the proposal, information regarding a financially deteriorating OCC Clearing Member, discovered by a participant exchange while monitoring its members' compliance with applicable financial responsibility standards, would be provided to OCC quickly and completely. OCC believes that the proposal should enable it to take more timely and appropriate action to protect itself and its clearing members from any increased financial exposure. Furthermore, OCC believes that, because of its enhanced ability to acquire and to act on that information, the current broader indemnification provisions in Section 23 no longer are appropriate. Consequently, OCC believes that the indemnification provisions now can be narrowed without creating any unreasonable financial risks to OCC or its participants.

OCC believes that the proposal will provide further assurance of the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and protect investors and the public interest. Accordingly, OCC believes that the proposal is consistent with Sections 17A(b)(3)(A) and (F) of the Act.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, N.W. Washington, D.C. 20549. Reference should be made to File No. SR-OCC-83-18.

Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change which are filed with the Commission, and all written communications to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-23826; Filed 8-29-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0327]

Advent Atlantic Capital Company; Application for License To Operate as a Limited Partnership Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.4 of the Regulations governing SBICs (13 CFR 107.4 (1983)) under the name of Advent Atlantic Capital Co. Limited Partnership, 111 Devonshire St., Boston, Massachusetts 02109, for a license to operate in the New England Area as a Limited Partnership SBIC under the provisions of the Small Business Investment Act of 1958 (Act) as amended (15 U.S.C. 661 et seq.).

The partnership will begin operations with private capital of \$2,517,780.

The General Partner of the Partnership is SBIP Co., 111 Devonshire St., Boston, Massachusetts 02109.

The general partners of SBIP Co. are: Peter A. Brooke, 111 Devonshire St., Boston, Massachusetts 02109; C. Kevin Landry, 111 Devonshire St., Boston, Massachusetts 02109; David D. Croll, 111 Devonshire St., Boston, Massachusetts 02109; E. Roe Stamps IV, 111 Devonshire St., Boston, Massachusetts 02109; Richard H. Churchill, Jr., 111 Devonshire St., Boston, Massachusetts 02109.

Matters involved in SBA's consideration of the application include

the general business reputation and character of the proposed General Partner and the reasonable prospects for a successful operation of the SBIC under its management including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any interested person may (not later than 10 days from the publication of this Notice) submit written comments on the application to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Boston Area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1983.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 83-23805 Filed 8-29-83; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0182]

Norwest Venture Partners; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), under the name of Norwest Venture Partners, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.) and the Rules and Regulations promulgated thereunder.

The proposed general and limited partners and investment advisor are:

General Partners

Robert F. Zicarelli, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

Daniel J. Haggerty, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

Wayne B. Kingsley, 1300 S.W. Fifth Avenue, Suite 3018, Portland, Oregon 97201

Anthony J. Miadich, 1300 S.W. Fifth Avenue, Suite 3018, Portland, Oregon 97201

Douglas E. Johnson, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

Timothy A. Stepanek, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

Leonard J. Brandt, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

Larry R. Wonnacott, 7625 West 5th Avenue, Suite 202, Lakewood, Colorado 80226

Mark Dubovoy, 7625 West 5th Avenue, Suite 202, Lakewood, Colorado 80226

John P. Whaley, 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

Norwest Investors, Inc., 1730 Midwest Plaza Building, Minneapolis, Minnesota 55402

All the foregoing are general partners of Norwest V. C. Partners, a general partnership, whose address is the same as Norwest Investors, Inc.

Limited Partner

Norwest Corporation, 1730 Midwest Plaza Building, 801 Nicollet Mall, Minneapolis, Minnesota 55402

Investment Advisor

Norwest Venture Capital Management, Inc., 1730 Midwest Plaza Building, 801 Nicollet Mall, Minneapolis, Minnesota 55402

Norwest Corporation is a bank holding company and financial services organization and the parent company of the Investment Advisor.

The Applicant proposes to begin operations with a capitalization, after organization expenses, of approximately \$50,725,000 depending upon the success of a private offering of limited partnership interest. The Applicant will be a source of equity capital and long term loan funds for qualified small business concerns. The Applicant may render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of the publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L"

Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Minneapolis, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-23804 Filed 8-29-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standard for Vertical Separation above Flight Level 290 to be held on September 21-22, 1983 in the RTCA Conference Room, Suite 500, 1425 K Street, NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Third Meeting Held on January 12-13, 1982; (3) Review Status of FAA Data Collection Activity; (4) Review and Discussion of Working Group Activities on System Performance Requirements, Altimetry System Errors, and Flight Technical Errors; (5) Assignment of Tasks; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, Suite 500, 1425 K Street, NW., Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 22, 1983.

Karl F. Bierach,

Designated Officer.

[FR Doc. 83-23700 Filed 8-29-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Adams County, Nebraska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Adams County, Nebraska.

FOR FURTHER INFORMATION CONTACT:

Howard H. Bryant, District Engineer, FHWA, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 471-5527. Gerald Grauer, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 473-4795.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads (NDOR), will prepare an Environmental Impact Statement (EIS) on a proposal to upgrade a section of U.S. Highway 6 in Hastings, Nebraska from 1,100 feet west of Elm Avenue to Showboat Road east of Hastings. The length of the project is 2.2 miles. The proposed action consists of the construction of a four-lane divided facility on new location with an overpass structure over the Union Pacific Railroad tracks and an interchange with Showboat Road.

Alternatives under consideration include: (1) Taking no action; (2) reconstruction on existing alignment; or (3) constructing the proposed project.

No formal scoping meeting is planned at this time. A public hearing will be held after the Environmental Impact Statement has been made available for public and agency review and comment. Public notice will be given of the time and place of the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA or the NDOR at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: August 22, 1983.

Howard H. Bryant,

District Engineer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 83-23722 Filed 8-29-83; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Change of Name of Approved Trustee; Northwestern National Bank of Minneapolis

Notice is hereby given that effective May 1, 1983, Northwestern National Bank of Minneapolis, Minneapolis, Minnesota, changed its name to Norwest Bank Minneapolis, National Association.

Dated: August 23, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-23782 Filed 8-29-83; 8:45 am]

BILLING CODE 4910-51-M

National Highway Traffic Safety Administration

[Docket No. IP 83-15; Notice 1]

Ford Motor Co.; Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

Ford Motor Company of Dearborn, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Taillamps and stop lamps must comply respectively with SAE Standard J585e *Tail lamps (Rear Position Light)*, September, 1977, and SAE Standard 585c *Stop Lamps*, August 1970. These standards are incorporated by reference in Federal Motor Vehicle Safety Standard No. 108. Paragraph 4 of each of the SAE Standards requires that, when installed on a vehicle, a taillamp and a stop lamp's signals shall be visible through a horizontal angle from 45 degrees to the left to 45 degrees to the right. Further, "to be considered visible,

the lamp must provide an unobstructed projected illuminated area of outer lens surface, excluding reflex, at least 2 sq. in. in extent, measured at 45 deg to the longitudinal axis of the vehicle."

Ford has manufactured approximately 4000 1984-model Bronco II vehicles which appear not to comply with the visibility requirements. These vehicles are equipped with the optional "Outside Swing-Away Spare Tire/Wheel carrier and with optional P205/75R-15SL size spare tires." Ford reports a partial obstruction of the right side lens by the rear mount spare tire, when viewed from the left, as from a position in an adjacent traffic lane to the rear of the Bronco II. When viewed at 45 degrees to the left, approximately only 1.1 square inches of illuminated lens area is available, although the requisite minimum of 2 square inches is met at 42 degrees. The nonconformity has been corrected by repositioning the spare tire on the carrier by two inches.

As part of its submission Ford presented mathematical data to support its contention that the eyes of a driver following in the same lane as a Bronco II could not reach or surpass a cut-off boundary of 42 to 45 degrees for the right side lamp unit, even in a bumper to bumper situation (where the angle would be 27 degrees). For vehicles approaching the Bronco II in adjacent lanes to the left, the difference in trailing distances when the driver's eyes are at the 42 and 45 degrees cut-off lines "are insignificant (approximately 1 3/4 feet to 4 1/4 feet) as to effect on timely discernability of the rear of the Bronco II vehicle, even if the left side (lamp) were to be inoperative." This difference, Ford believes, is insignificant as it relates "to ability of a driver to discern and react to the stop lamp signal, even when travelling under city vehicle traffic separation and speed conditions." Ford argues that the lamps in question perform their intended functions in a manner indistinguishable for all practical purposes from these on vehicles that meet the standard.

Interested persons are invited to submit written data, views and arguments on the petition of Ford Motor Company described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered.

The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney principally responsible for this notice are respectively Kevin Cavey and Taylor Vinson.

Comment closing date: September 29, 1983.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 24, 1983.

Kennerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-23841 Filed 8-29-83; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

On August 23, 1983 the Department of the Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545-0048

Form Number: IRS Form 982

Type of Review: Existing Regulation

Title: Adjustments of Basis of Property Under Sections 1017 or 1082(a)(2) of the Internal Revenue Code

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Cathy Thomas,

Departmental Reports Management Office.

[FR Doc. 83-23832 Filed 8-29-83; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

(Supplement to Department Circular, Public Debt Series—No. 25-83)

Notes, Series X-1985

Washington, August 25, 1983.

The Secretary announced on August 24, 1983, that the interest rate on the notes designated Series X-1985, described in Department Circular—Public Debt Series—No. 25-83 dated August 18, 1983, will be 10% percent. Interest on the notes will be payable at the rate of 10% percent per annum.

Carole J. Dineen,

Fiscal Assistant Secretary.

(PR Doc. 83-23809 Filed 8-29-83; 8:45 am)

BILLING CODE 4810-40-M

(Department Circular; Public Debt Series—No. 26-83)

Treasury Notes of November 15, 1988; Series K-1988

Washington, August 24, 1983.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$6,000,000 of United States securities, designated Treasury Notes of November 15, 1988, Series K-1988 (CUSIP No. 912827 PX 4). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated September 6, 1983, and will bear interest from that date, payable on a semiannual basis on May 15, 1984, and each subsequent 6 months on November 15 and May 15 until the principal becomes payable. They will mature November 15, 1988, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes,

whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, August 31, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 30, 1983, and received no later than Tuesday, September 6, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed \$1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each

customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a 1/4 of one percent increment, which results in an equivalent average accepted price close to 100.000 and lowest accepted price above the original issue discount limit of 98.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent

to the weighted average yield of accepted competitive tenders.

3.6. competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Tuesday, September 6, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institution to which the tender was submitted, which must be received from institutional investors no later than Friday, September 2, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities

presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering.

Carole J. Dineen,
Fiscal Assistant Secretary.

[FR Doc. 83-23008 Filed 6-26-83; 8:45 am]
BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

International Youth Exchange; Approved Logo Usage

AGENCY: United States Information Agency.

ACTION: Announcement.

SUMMARY: The United States Information Agency announces the opportunity for qualifying participants in the President's International Youth Exchange Initiative to use the Initiative's logo for approved purposes.

EFFECTIVE DATE: This announcement is effective August 30, 1983.

FOR FURTHER INFORMATION CONTACT: The International Youth Exchange Staff, Bureau of Educational and Cultural Affairs, United States Information Agency, 400 "C" Street, SW., Room 255, Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency announces the opportunity for qualifying participants in the President's International Youth Exchange Initiative to use the Initiative's logo for approved purposes. This announcement covers the criteria for qualifying to use the logo, under what circumstances the logo may be used, misrepresentation, and the application procedure for obtaining permission to use the logo.

Criteria

The Agency, in its discretion, will grant permission to use the logo to organizations which meet the following three criteria:

1. One of the following: a. a tax exempt organization which holds a Section 501(c)(3) exemption from the Internal Revenue Service; b. a tax supported organization; or c. such other non-profit organizations which can demonstrate to the Agency's satisfaction that they possess community based volunteer support for International Youth Exchange.
2. The organization must sponsor or support international youth exchange programs for 15-25 year olds.
3. a. The organization must have a proven track record, which means that the organization has four years of experience in youth exchange; or
b. The organization must demonstrate, to the Agency's satisfaction, a commitment to community based volunteer participation and support for youth exchange which upholds the goals and aims of the President's Initiative.

Use

Permission will be granted for specific use of the logo. Applicants must specify how the logo will be used. Authorization will only be issued for the stated use in the request. Expanded use will require re-authorization. Authorizations will be effective for one year from the date of authorization.

The Agency contemplates that organizations will be authorized to use the logo for certain purposes. Anticipated authorizations include but are not limited to internal newsletters, in annual reports, for an article about the President's Initiative, on fundraising literature, and for limited commercial purposes as specifically approved.

Misrepresentation

Permission to use the logo indicates that the organization is a participant in the President's Initiative. It in no way implies sponsorship, approval, authorization, guarantee, support, or designation of the organization's programs by the President's International Youth Exchange Initiative, the United States Information Agency or the United States Government and may not be represented by an organization as such.

Application Procedure

Organizations or groups which meet the stated criteria should send a request in writing to the address noted above. The request should state the intended use of the logo. Documentation supporting the application must accompany the request.

The Agency will make its decision on whether to grant permission to use the logo based on 1) the documentation supplied by the organization; and 2) upon any information the Agency possesses by virtue of its involvement in the field of international youth exchange.

Re-Authorization

The Agency will exercise its discretion when re-authorizing permission for an organization to use

the logo. The Agency will consider whether:

1. The organization is financially responsible;
2. The organization has appropriately represented international youth exchange, the President's Initiative, or the organization's relationship to the President's Initiative;
3. The organization has complied in good faith with the goals and aims of the President's Initiative; or
4. The organization's conduct has brought either the organization or the President's Initiative into disrepute.

Dated: August 24, 1983.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs, United States Information Agency.

[FR Doc. 83-23696 Filed 8-29-83; 8:45 am]

BILLING CODE 5230-01-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 169

Tuesday, August 30, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, August 31, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 82-335; Petition for Discretionary Review. (Issues include whether the judge erred in concluding that violations of mandatory health and safety standards were "significant and substantial", and whether the judge assessed appropriate penalties.)
2. Patrick J. Mooney v. Sohio Western Mining Co., Docket No. CENT 81-157-DM. (Issues include whether the judge properly concluded that the operator did not violate the Mine Act in discharging the miner.)
3. U.S. Steel Corporation, Docket No. LAKE 81-102-RM, etc. (Issues include whether the judge erred in concluding that the operator violated the Mine Act by restricting a Mine Safety and Health Administration inspector's access to the scene of a truck rollover and by insisting that an attorney be present when a foreman was interviewed by inspectors.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1229-83 Filed 8-26-83; 12:56 pm]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM (Board of Governors)

TIME AND DATE: 10:00 a.m., Tuesday, September 6, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal to seek a formal opinion in connection with disclosure requirements, chiefly under the Board's consumer regulations. (This matter was originally announced for a meeting on August 29, 1983.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 26, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1233-83 Filed 8-26-83; 4:04 pm]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-83-39A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 38713, August 5, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Tuesday, September 6, 1983.

CHANGES IN THE MEETING: Rescheduling of the Meeting as follows:

By action jacket, the United States International Trade Commission, in conformity with 19 CFR 37(b), voted to reschedule the meeting from Tuesday, September 6, 1983, to Wednesday, September 7, 1983, at 9:30 a.m. No other changes were made in the agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1230-83 Filed 8-26-83; 2:29 pm]

BILLING CODE 7020-02-M

4

NEIGHBORHOOD REINVESTMENT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 23, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., August 26, 1983.

CHANGE IN THE MEETING: The meeting is cancelled. It will be rescheduled for a later time.

[No. 30, August 26, 1983]

Carol J. McCabe,
Secretary.

[S-1231-83 Filed 8-26-83; 3:40 pm]

BILLING CODE 6000-05-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Week of August 29, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open. *Thursday, September 1: 3:30 p.m.*

Affirmative/Discussion and Vote (Public Meeting):

- a. Motion for Reconsideration of the Indian Point Decision
- b. Draft Order ALAB-698 (TMI Restart Emergency Planning) (postponed from August 24)
- c. Final Rule—NRC Rulemaking to Amend 10 CFR 2.200 and 2.201

AUTOMATIC TELEPHONE ANSWERING

SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee, (202) 634-1410.

Dated: August 25, 1983.

Walter Magee,
Office of the Secretary.

[S-1232-83 Filed 8-26-83; 3:50 pm]

BILLING CODE 7590-01-M

6

PAROLE COMMISSION.

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland Headquarters).

TIME AND DATE: 10 a.m., Wednesday, August 31, 1983.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 3 cases in which inmates of Federal prisons have applied for

parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE

INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492-5987.

[S-1228-83 Filed 8-28-83; 11:38 a.m.]

BILLING CODE 4410-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 5, 1983, at 450 5th Street, N.W., Washington, D.C.

An open meeting will be held on Wednesday, September 7, 1983, at 10 a.m. in Room 1C30 followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C.

552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Evans, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, September 7, 1983, at 10 a.m., will be:

1. Consideration of whether to publish for comment a proposal to amend and restate the Commission's regulations related to the preservation of records under the Public Utility Holding Company Act of 1935. For further information, please contact Grant G. Guthrie at (202) 272-7677.

2. Consideration of whether to adopt amendments to Rule 206(3)-2 under the Investment Advisers Act of 1940 which would eliminate the requirements that an investment adviser obtain at least annually from a client written renewal of the client's consent to agency cross transactions. For further information, please contact Forrest R. Foss at (202) 272-2309.

3. Consideration of whether to rescind Form X-17A-1 and adopt proposed amendments to Securities Exchange Act Rule 17a-2 which would eliminate the requirement that participants in an offering that is stabilized file with the Commission reports of their transactions, including stabilizing transactions, in offered securities. The amendments would require instead that information concerning stabilizing transactions be retained by the manager of the underwriting syndicate. The Commission will also consider corresponding technical changes to be made to Securities Exchange Act Rule 10b-7. For further information,

please contact Howard A. Bartnick at (202) 272-2874.

4. Consideration of whether to issue an order approving a plan for the allocation of regulatory responsibilities pertaining to options-related sales practice matters filed by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Midwest Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange Inc., and the Philadelphia Stock Exchange, Inc. pursuant to Rule 17d-2 under the Act. For further information, please contact Elizabeth S. York at (202) 272-2377.

The subject matter of the closed meeting scheduled for Wednesday, September 7, 1983, following the 10 a.m. open meeting, will be:

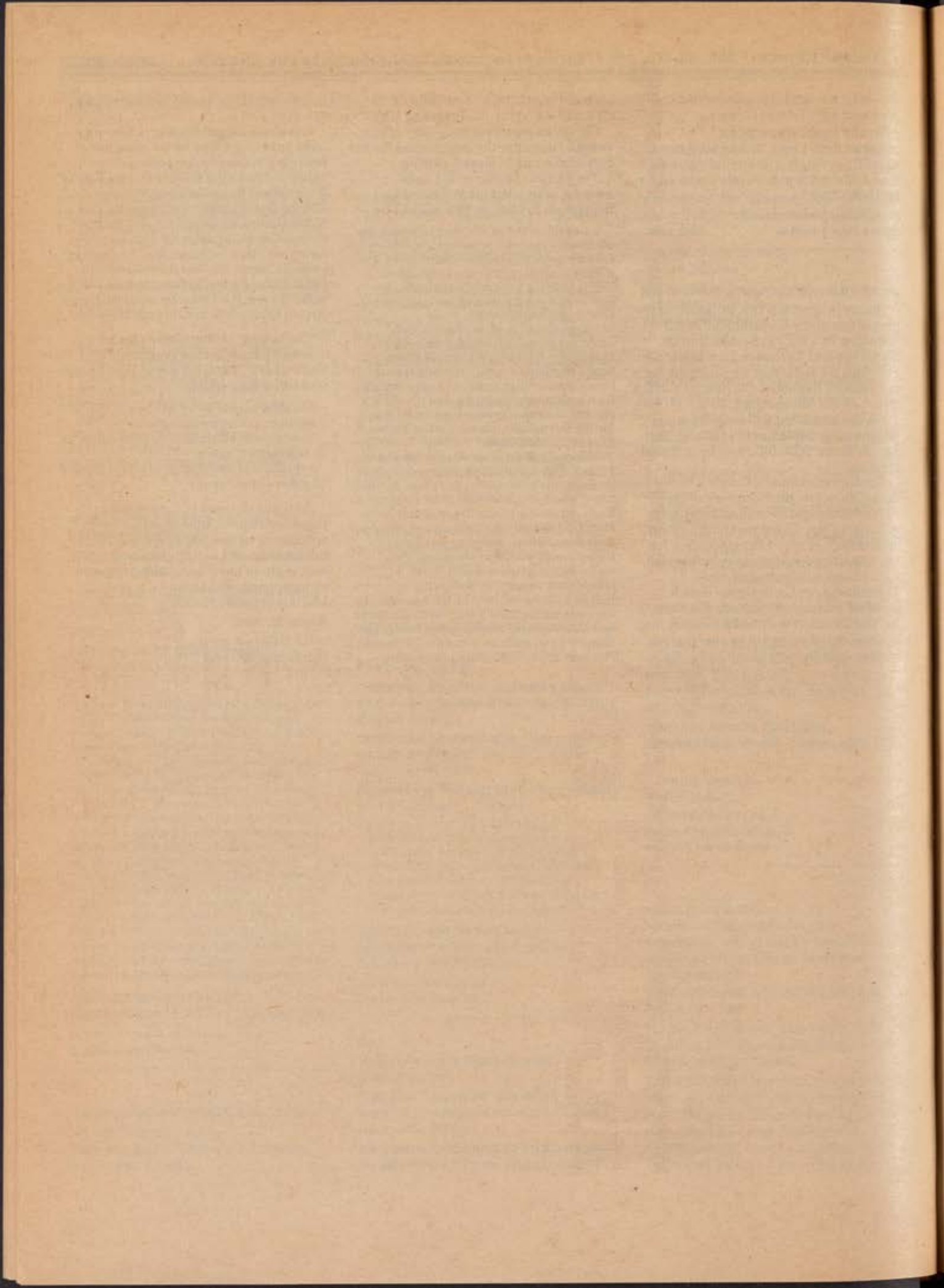
Formal orders of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272-2092.

August 25, 1983.

[S-1227-83 Filed 8-25-83; 4:18 pm]

BILLING CODE 8010-01-M



Federal Register

Tuesday
August 30, 1983

Part II

Department of Energy

Office of Conservation and Renewable
Energy

State Energy Conservation Program

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 420

[Docket No. CAS-RM-79-501]

State Energy Conservation Program

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing the final rule today amending the State Energy Conservation Program (SECP) by using the most recent annual census updates instead of July 1976 data for the population component of the funding formula, by making changes to the building lighting and thermal efficiency standards requirements which recognize the different types of constitutional authority States have to adopt such standards, and by making other administrative changes. The current energy savings component of the funding formula is retained for use in FY 1984, should funds be provided for SECP for FY 1984. The formula will be modified for subsequent fiscal years if a pilot test indicates that use of estimated actual energy savings validated by DOE is workable.

The final rule will provide States with greater flexibility to adopt energy efficiency goals and program measures suited to their individual circumstances. It will also reduce the administrative and regulatory burden on States. Since many of today's administrative amendments are the same or similar to changes made to the Energy Extension Service (EES), DOE is improving and simplifying State administration of both programs. The amendments are expected to result in increased program effectiveness for the Federal and State dollars spent, expanded State control over the use of funds, and decreased Federal involvement in State-specific decisions.

EFFECTIVE DATE: September 29, 1983.

FOR FURTHER INFORMATION CONTACT:

Mary Fowler, Office of Energy Management and Extension, Department of Energy, Mail Stop CE-24, 5B-137, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8287.

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6G-094, Room 6B-144, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Amendments to the State Energy Conservation Program

III. Environmental, Regulatory Impact, Small Entity Impact, and Paperwork Reduction Act Reviews

I. Introduction

When first enacted, Part C of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 932 (42 U.S.C. 6321 *et seq.*), provided financial assistance to develop, modify or implement State energy conservation plans. Part C was subsequently amended by Part B of Title IV of the Energy Conservation and Production Act (ECPA) Pub. L. 94-385, 90 Stat. 1158 (42 U.S.C. 6326 and 6327), which provided financial assistance to develop, modify or implement supplemental State energy conservation plans. Together, the EPCA and ECPA provisions describe the State Energy Conservation Program (SECP).

Regulations for the program, 10 CFR Part 420, were promulgated by the Federal Energy Administration on February 20, 1976 (41 FR 8335, February 26, 1976); October 28, 1976 (41 FR 48325, November 3, 1976); and May 13, 1977 (42 FR 26413, May 24, 1977). The Department of Energy (DOE) amended the guidelines for SECP in order to consolidate and simplify the guidelines on March 29, 1979 (44 FR 20055, April 4, 1979). Proposed amendments were published in the Federal Register on February 11, 1983 (48 FR 6492). The proposed amendments would have replaced joint State and DOE goal setting in terms of projected energy savings with State goal setting under more flexible terms, replaced the use of projected energy savings in the funding formula with estimated actual energy savings as validated or calculated by DOE for a prior 12-month period, replaced July 1976 data with decennial census data for the population component of the funding formula, made changes to the building lighting and thermal efficiency standards requirements, and made other administrative changes. Comments were invited for the following 30 day period ending March 14, 1983. Comments were received from twenty-seven States, one territory, one member of Congress, one public interest group, and one trade association. Five States presented testimony at the public hearing held on March 1, 1983 in conjunction with the public hearing on the Energy Extension Service. The following section summarizes the comments, suggestions, and actions taken.

II. Amendments to the State Energy Conservation Program

Section 420.2 Definitions. One comment suggested that the part of the definition of exempted building referring to any building owned or leased in part by the U.S. government be deleted, and that the decision to exempt any building should be left to the State government. No change has been made, however, because the exempted status of public buildings owned or leased by the United States is specified in the program legislation, 42 U.S.C. 6322(c).

Section 420.3 Financial Assistance. In this section, DOE proposed to delete reference to a calendar year budget period for State grants and add a statement that the State grant budget periods are to be established within parameters set by DOE. All of the comments on these changes were in agreement with the proposed amendments, and the proposed amendment has been adopted in the final rule.

DOE proposed to use decennial census data instead of July 1976 data for the population component of the funding formula. Several comments in favor of this change were received. In addition, several comments favoring use of Bureau of the Census annual updates were received. DOE has amended the regulation to use for the population component of the funding formula the most recent census updates available for all grantees at the time DOE needs to compute SECP formula shares. Because of the current timing of the publication of these figures by the Bureau of the Census and the timing of appropriations, there could be a lag in the population figures used, e.g., if funds are appropriated to SECP in FY 1984, the formula computations would be made in December 1983. They would therefore probably use the annual updates for 1982 published by the Bureau of the Census in the summer of 1983. However, the use of the most recent updates will recognize the population changes in each State and will more accurately reflect current population than the decennial census.

DOE had also proposed to substitute in the funding formula actual energy savings as validated or calculated by DOE for projected energy savings. This proposed change generated the greatest response from those commenting on the proposed rule amendments. Five comments supported the proposed change, sixteen comments expressed opposition to the proposal, and five questioned its advisability without more details and experience.

Several advantages to the proposal were cited by those comments received in support of the change. These advantages included a reduction in State staff workload related to calculating energy savings, since the proposed change eliminated the need to calculate projected energy savings in addition to actual energy savings. The proposed change to the energy savings component of the funding formula was also cited as likely to result in more accurate energy savings reports and, therefore, a more accurate reflection of a State's performance in conserving energy than DOE currently receives. In addition, it was noted that the proposed change would encourage States to use their funds for activities which would result in the greatest energy savings.

While recognizing the need for and value of efforts to evaluate program impact, those opposing the proposed change cited a number of disadvantages to DOE's proposed procedure for tying the results of such evaluations to the allocation of funds among States. They pointed out that energy savings are difficult to measure accurately, since the methodologies available for such measurements vary widely in their reliability depending on the type of activity being evaluated. Moreover, attempting to attribute observed energy savings only to SECP activities (versus price or other factors) is time consuming, expensive, and for some activities impossible. It was further argued that the combined effort required of States and DOE under the proposal would be more complex and time consuming than under the current regulations and thus contrary to DOE's stated intent to simplify requirements and procedures.

It was also suggested that such a change was not needed because it is unnecessary to require States to compete for a large portion of the funds based on energy savings in order to persuade them to choose the most effective energy conservation programs. States noted they have other incentives, such as decreased Federal resources for energy conservation, to allocate funds to the most effective programs.

The proposal was also cited as leading to the adoption of measures which would not be likely to produce the greatest savings over a long period of time. For example, the proposal was viewed as rewarding conservation measures with payoffs of one year or less and deemphasizing activities that produce most of their energy savings several years after initiation. The proposal was also thought to encourage State funding of activities that generate easily verifiable energy savings in the

short term and to discourage innovative and untested program measures whose energy savings are uncertain but whose potential may be significant. In addition, States which have completed the relatively easy first steps would be penalized, as they now are involved in more complicated programs that do not necessarily generate large energy savings in the first year of operation.

Some of those opposing the proposal also suggested that States would continue to overstate energy savings and that there would be an ongoing debate between DOE and the States on the process for verifying the energy savings data and on the resulting numbers. It was also suggested that DOE has limited staff capabilities to undertake the activities required by the proposed change, and that expenditure of SECP funds by DOE for contractor validation assistance would reduce sums available to States for more important programmatic activity.

Several comments on the proposed change to the energy savings component of the funding formula offered alternative proposals, such as reducing the weight given to energy savings in the formula, or adding factors like degree days to the current components of the formula. Others suggested that the switch to use of actual energy savings be deferred until a workable validation system is developed by DOE. Some States offered to assist DOE in the development of such a system.

In response to these comments DOE has decided to retain the current use of 35 percent of the funding formula based on projected energy savings through FY 1984. During this time DOE will design and conduct with State help a pilot test of an energy savings validation or calculation system to determine the feasibility and workability of the concept. If, through the pilot test, the system is determined to work, DOE may amend the regulations to incorporate the use of actual energy savings as validated or calculated by DOE to compute 35 percent of the SECP funding formula beginning in FY 1985.

Section 420.4 Annual State Applications. In this section, DOE proposed to delete reference to the State application due date because the appropriations outcome is often not known by the date the applications are due under the existing regulation. One comment in support of this proposal was received. No negative comments on this change were received; however, one comment asked that no changes be made to this entire section. DOE believes its original proposal is the best procedure and has deleted the reference

to the application due date in the final rule.

Several additional comments were received on this section. One suggested that this section be amended to permit the Governor or a person designated by the Governor to sign the annual State application, noting that it is sometimes difficult to obtain a Governor's signature on routine administrative documents which are the responsibility of a State agency. A change to this section is not necessary, however, because the definition of Governor contained in § 420.2 already includes provisions for an authorized person to act on the Governor's behalf.

A second suggestion concerned using a 3-year State plan with annual funding for SECP as is done in the Energy Extension Service program. DOE considered this option in the preparation of the proposed amendments but rejected it because the financial problems some States are encountering make the preparation of an annual budget difficult enough without creating additional problems by requiring a multi-year budget.

A third comment was in response to DOE's proposal to request budget information for the total program by object class category. While in agreement with the change, the comment suggested that the language be clarified to indicate that an object class budget is not required for each program measure. To clarify the requirement, DOE has modified § 420.4 (b)(2) and (b)(2)(i) of the proposed revised regulations to indicate that the annual State application shall include a total program budget by object class category and source of funding for the budget period for which financial assistance will be provided. The form which States currently use to convey this information is OMB Standard Form 424, Part III. Budget and milestone details on each program measure, on the other hand, are required in § 420.4(b)(2)(iii) and are conveyed on the Management Summary Report form (OMB No. 1901-0127). The Management Summary Report form does not require object class category information for each program measure.

A comment requested that DOE retain the requirement from the existing rule that a State include in its application information regarding how it will assess actual energy savings under a program measure. The final rule does not request this information as part of the annual State application. However, DOE may require as part of a State's annual energy savings report specified in § 420.11(b) of the revised regulations a similar written statement indicating how

a State obtained and analyzed the energy savings data contained in the report. Until the validation system is designed, it is not possible to specify exactly what data a State may need to submit in its energy savings report.

DOE received one comment concerning the request for an extension of the submission date of the annual State application. The comment requested a clarification of the phrase "acceptable and substantial justification" which is used in § 420.4(c) of the revised regulation to describe the circumstances under which the Operations Office Manager may grant an extension. However, DOE has decided not to limit the discretion of the field offices to respond to the number of situations which could arise requiring an extension of the submission date by further delimiting when an extension may be granted.

In § 420.4 DOE proposed to eliminate the requirement for States to set energy conservation goals only in terms of Btu's saved and allow them to set SECP goals in either qualitative or quantitative terms. Several comments supporting the proposed change were received and the proposed change is adopted. In addition, two States expressed some confusion as to the relationship of the energy conservation goals which a State sets in its plan under the revised regulation to the computation of State shares under the funding formula. The energy conservation goals set by States in their plans will not be used in the funding formula. As in the past three fiscal years, the energy savings numbers for the funding formula in FY 1984 will be calculated by DOE based on States' 1980 projected savings. As mentioned above, the regulations may be amended to permit another system to be used beginning in FY 1985 if the validation system to be tested during FY 1984 is shown to be workable.

Section 420.5 Review and Approval of Annual State Applications and State Plans. One comment suggested that the Operations Office Manager be given 45 days in which to review and approve annual State applications and plans. DOE tries to review and approve plans within 60 days of receipt although it is not always successful in doing so. DOE will continue to try to review and approve plans within 60 days of receipt as a matter of policy but no time frame for the review process has been added to the regulation.

Section 420.6 Minimum Criteria for Required Program Measures for Plans. DOE received one comment concerning minimum criteria based on ASH 90-75 and the Housing and Urban Development Department's Minimum

Property Standards (HUD MPS). The comment pointed out that ASHRAE 90-75 has been superseded by ASHRAE 90-1980 and suggested that the updated standard replace reference to ASHRAE 90-75 in all citations. However, DOE has made no change in the reference to the ASHRAE 90-75 standard. No amendment to the use of the standard was proposed in the NOPR, and DOE does not think it appropriate to require a more stringent standard without further review and comment on such an action. However, States may voluntarily move to a more stringent standard such as ASHRAE 90A-1980, and many have done so.

The comment also suggested deleting the option in § 420.6(d)(4) of the revised regulation of using the HUD MPS as an alternative minimum criteria for thermal efficiency standards for new residential construction. Again, no amendment to the use of the standard was included in the NOPR. Further review and comment would be needed to properly evaluate the suggestion, since the technical issues raised are complex. As in the case of the suggested change to the reference to the ASHRAE standard, deleting the option of using HUD MPS is beyond the scope of the present rulemaking. DOE has, therefore, made no change to the references to the HUD MPS.

A territory requested a regulation change to exempt those eligible recipients who do not have traffic lights from being required to enact a right turn on red traffic law. DOE will continue to interpret the regulation to exempt entities in such situations but does not think it necessary to change the regulation.

In § 420.6 DOE proposed building lighting and thermal efficiency standards requirements which recognize the different types of constitutional authority States have to adopt such standards. Ten States and one public interest group responded favorably to the proposed changes. Five States raised issues relating to and requesting more flexibility to adopt the standards. In DOE's view, the program legislation does not allow any greater flexibility in this area. States having the constitutional authority to adopt and implement building lighting and thermal efficiency standards are required to do so. States which have adopted codes they would like to use to fulfill the requirements of the building lighting and thermal standards should continue to submit them to the appropriate DOE field office for a determination that each code meets or exceeds the minimal requirements for the building lighting and thermal efficiency standards.

Section 420.10 Technical Assistance. One comment suggested that technical assistance should be either available or not available, but that this service should not be left to DOE's discretion. DOE is unable, however, to commit itself to an unlimited amount of technical assistance because of budgetary and staff considerations. It will continue to provide this service to the extent possible.

Section 420.11 Reports. One comment suggested making the quarters for which States submit reports to DOE coincide with the State's approved budget period instead of using calendar quarters as required by the proposed regulation. DOE considered this in the preparation of the proposed amendments, but rejected it. For budget monitoring and reporting purposes, DOE needs State reports covering the same calendar time period, although DOE fully recognizes that these reports represent different portions of States' budget periods.

DOE proposed requiring States to submit an annual energy savings report containing the data needed for calculating the proposed 35 percent of the State funding formula involving energy savings. The requirement of an annual savings report is adopted in the final rule; the data will be used in the pilot test of the validation system during FY 1984, and in the validation system if it is adopted subsequently. However, reference to the use of the data provided in the annual savings report has been deleted from the final rule, since the proposed funding formula based on validated actual energy savings will be tested but not implemented in FY 1984. Two comments were received suggesting submission dates for the annual savings report. These suggestions will be considered during the pilot test of the energy savings validation system.

A comment also pointed out that there was a potential error in the OMB control number listed for the quarterly program performance and quarterly financial status reports. A review of the records has shown that the control number listed in the regulation (OMB No. 1901-0127) is correct. The form itself contains a typographical error in the number, which will be corrected when it is reprinted at some future time.

Section 420.12 Prohibited Expenditures. DOE received one comment asking for a clarification on the prohibition of expenditures for utility rate demonstrations. This provision prohibits the use of funds to subsidize such activities as the administration of experimental rates, the solicitation or review of public

comments concerning utility rates, and the preparation of utility rate studies. Since such activities can be very expensive to undertake and may be better handled by utilities or public utility commissions, no change has been made in the regulation on the prohibition of expenditures for utility rate demonstrations.

The prohibition on use of SECP funds to subsidize State insulation tax credits has been expanded to include all tax credits for energy conservation. Many more types of tax credits for energy conservation exist now than did at the time the program legislation was enacted. The prohibition now extends to these other types of tax credits as well.

Five comments were received requesting that the regulations permit use of funds for retrofits, especially for State and local government buildings, and revolving or other loan mechanisms to finance such retrofits. Some States suggested limiting these activities to funds received from the Petroleum Violation Escrow Fund under Section 155 of the Further Continuing Appropriation Act, 1983, Public Law 97-377 (Section 155).

DOE believes that it is not permissible to differentiate between the use of Section 155 and appropriated funds. It was the intent of Congress to have a single set of uses for these two sources of funds.

DOE notes that the Congress has given some consideration in the past to energy conservation retrofits and other types or renovations for State and local government buildings, but legislation has not been reported out of committee which would permit such activities. In addition, a bill has been introduced recently in the Senate to amend Section 155 to allow retrofits for local government buildings to be funded under Section 155. DOE has, therefore, decided not to permit, at this time, the direct purchase or installation of equipment or materials for energy conservation building retrofits or weatherization. For clarity, a prohibition on the use of SECP grant funds for energy conservation building retrofits or weatherization has been added as § 420.12(a)(6) of the final rule. However, SECP funds may be used to reduce the interest rate charged on loans of non-SECP funds made by States, banks or other financial institutions for energy conservation retrofits.

Regarding loans, DOE has decided to allow States in § 420.12(d) of the revised regulation to use regular or revolving loans (but not loan guarantees) to finance services which are consistent with the SECP final rule and which are included in a State's approved SECP

plan. This means, for example, that a State could offer building energy audits, on a loan basis, if building energy audits is a measure included in the State's approved SECP plan. But a State cannot make loans to finance energy conservation retrofits, since retrofits are not permitted in the SECP final rule. This addition to the regulation makes clear that loans are one type of financing mechanism for providing services which States may use in addition to other means, such as fee-for-services or services at no cost. Repaid loans and interest, if any, must be returned to the State's SECP program for reuse on the same or other activities which are consistent with the SECP final rule and which are included in a State's approved SECP plan.

DOE received several comments opposed to the new prohibition on the use of SECP funds to conduct or purchase equipment to conduct research, development, or demonstrations of conservation techniques and technologies not commercially available which was contained in the proposed rule. This prohibition on the use of funds is the same as in EES and was proposed for SECP in order to make the section on prohibited expenditures the same for both programs. It was also added because the focus of SECP is on supporting energy conservation programs which are very likely to generate energy savings, particularly near-term energy savings, rather than on supporting research into energy conservation hardware which may not begin producing energy savings until some time in the distant future, if at all. DOE believes however, that the demonstration of conservation techniques and technologies presently commercially available, as permitted in EES, can very likely help produce near-term energy savings. DOE has expressly incorporated approval of this activity in § 420.12(c) of the revised regulation at the suggestion of one comment. Purchases of equipment made for this type of demonstration are not subject to the prohibitions on construction, building repair, and retrofit equipment; or to the 20 percent limitation on other types of equipment.

Section 420.13 Administration of Financial Assistance. DOE received one comment suggesting that too little guidance was provided as to the precise regulations, laws or rules applicable to the grant. A list of the requirements of applicable laws or a list of applicable laws being referenced by the phrase "but without limitation" was requested. The lists provided in 10 CFR § 600.2(e) and Appendix A to 10 CFR Part 600 (47

FR 44083, 44108), part of the DOE Financial Assistance Rules, are the most current lists of applicable laws. DOE has chosen to simply list the Financial Assistance Rules and not to repeat the citation of each applicable law or other document in this regulation. The phrase "but without limitation" permits the flexibility needed to keep the regulation in compliance with future laws without requiring future regulatory changes.

III. Environmental, Regulatory Impact, Small Entity Impact, and Paperwork Reduction Act Reviews

A. Environmental Review

As indicated in the February 11th notice, DOE prepared an environmental assessment for the original SECP program under the Energy Policy and Conservation Act. Notice of the availability of this assessment was published with a proposed rulemaking in the *Federal Register* on June 16, 1976 (41 FR 24410, 24412-13). An environmental impact statement was not prepared because, while the assessment identified certain adverse environmental impacts, they were found not to be "significant" within the meaning of the National Environmental Policy Act of 1969.

A subsequent environmental assessment of the Energy Conservation and Production Act amendments to the program was completed prior to issuance of the guidelines applicable to supplemental plans. Notice of this second assessment was published with a notice of proposed rulemaking in the *Federal Register* on March 25, 1977 (42 FR 16150-51). The assessment identified no significant impacts.

As stated in the February 11th notice, DOE has determined that the proposed amendments would not have any significant impacts, and that no additional environmental assessment or environmental impact statement is required. DOE did not receive any comments on this determination.

B. Executive Order 12291

DOE has concluded that this rule is not a "major rule" under Executive Order 12291 because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export

markets. DOE did not receive any comments directed at this certification.

The rule was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that agencies prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the Federal Register.

DOE certified in the February 11th notice that the proposed amendments would not have a "significant economic impact on a substantial number of small entities." DOE did not receive any comments that disputed this certification. Consequently, DOE certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*). They have been assigned OMB control numbers 1904-0026 (SECP) and 1901-0127 (DOE Uniform Contractor Reporting System).

E. The Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number for the State Energy Conservation Program is 81.041.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs/energy, Reporting and recordkeeping requirements, Technical assistance.

In consideration of the foregoing, the Department of Energy amends Part 420 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C. August 23, 1983.
Joseph J. Tribble,
Assistant Secretary, Conservation and Renewable Energy.

10 CFR Part 420 is revised to read as follows.

PART 420—STATE ENERGY CONSERVATION PROGRAM

Sec.

- 420.1 Purpose and scope.
- 420.2 Definitions.
- 420.3 Financial assistance.
- 420.4 Annual State applications.
- 420.5 Review and approval of annual State applications and State plans.
- 420.6 Minimum criteria for required program measures for plans.
- 420.7 Minimum criteria for required program measures for supplemental plans.
- 420.8 Extensions for compliance with required program measures.
- 420.9 Administrative review.
- 420.10 Technical assistance.
- 420.11 Reports.
- 420.12 Prohibited expenditures.
- 420.13 Administration of financial assistance.

Authority: Title III, Part C, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

§ 420.1 Purpose and scope.

(a) This part prescribes requirements for program measures included in plans and supplemental plans, and guidelines for the development, modification and funding of plans and supplemental plans. It is the purpose of this part to promote the conservation of energy and to reduce the rate of growth of energy demand through the development and implementation of a comprehensive State energy conservation plans program and the provision of Federal financial and technical assistance to States in support of such program.

(b) DOE has the responsibility to foster and promote comprehensive State energy conservation plans by providing technical and financial assistance for specific State initiatives to conserve and improve efficiency in the use of energy and to encourage the use of renewable resources. Because of the diversity of conditions among the various States and regions of the Nation, a wholly Federally administered program would not be as effective as one which is tailored to meet local requirements and to respond to local opportunities.

§ 420.2 Definitions.

As used in this part:

Act means Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*
ASHRAE 90-75 means those designated standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated, as approved by its Board of Directors on August 11, 1975, to provide design requirements for improvements of energy utilization in new buildings.

Btu means British thermal unit.

British thermal unit means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and one atmosphere of pressure.

Building means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

Carpool means the sharing of a ride by two or more people in an automobile.

Carpool matching and promotion campaign means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

Commercial building means any building other than a residential building, including any building constructed for industrial or public purposes.

DOE means the Department of Energy.

Energy audit means a survey of a building or buildings that is conducted in accordance with § 420.7(d) and Subpart B of 10 CFR Part 450 and which:

(a) Identifies the type, size, energy use level and the major energy using systems of such building or buildings;

(b) Determines appropriate energy conservation maintenance and operating procedures; and

(c) Indicates the need, if any, for the acquisition and installation of energy conservation measures.

Energy conservation means efficient energy use or the utilization of renewable energy resources which results in energy savings based upon a net reduction in the use of non-renewable energy resources.

Energy conservation measure means a measure which is identified as an energy conservation measure in accordance with Subpart D of 10 CFR Part 450.

Energy measure means an energy conservation measure or a renewable-resource energy measure as prescribed in Subpart D of 10 CFR Part 450.

Environmental residual means any pollutant or pollution causing factor which results from any activity.

Exempted building means:

(a) Any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area for all purposes;

(b) Any building with neither a heating nor cooling system;

(c) Any mobile home; or

(d) Any building owned or leased in whole or in part by the United States.

Exterior envelope physical characteristics means the physical nature of those elements of a building

which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

Governor means the chief executive officer of a State and the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

Grantee means the State or other entity named in the notice of grant award as the recipient.

HVAC means heating, ventilating and air-conditioning.

Heating, ventilating and air-conditioning means a system that provides heating, ventilation and/or air conditioning within or associated with a building.

HUD minimum property standards means any of the rules and regulations adopted by the Department of Housing and Urban Development establishing minimum acceptable levels of site design, site preparation, exterior and interior appurtenances which standard is applied to single or multifamily housing units which seek assistance under one or more programs administered by the Assistant Secretary for Housing and Mortgage Credit of the Department of Housing and Urban Development.

Industrial plant means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

Major building type means a class of buildings within which similar functions occur such as hospitals, restaurants, hotels and supermarkets.

Metropolitan Planning Organization means that organization required by the Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.

National energy conservation program means a program which is authorized by Federal statute and is wholly implemented by the Federal Government, without the active participation of a State or local government, other than for usual coordination or acknowledgement.

Operations Office Manager means the manager of a DOE Operations Office or his or her designee.

Park-and-ride lot means a parking facility generally located at or near the trip origin of carpools, vanpools and/or mass transit.

Plan means a State energy conservation plan including required program measures in accordance with § 420.6 and otherwise meeting the applicable provisions of this part.

Political subdivision means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority, school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.

Preferential traffic control means any one of a variety of traffic control techniques used to give carpools, vanpools and public transportation vehicles priority treatment over single occupant vehicles other than bicycles and other two-wheeled motorized vehicles.

Program measure means one or more State actions, in a particular area, designed to effect energy conservation, excluding actions in areas specifically covered by national energy conservation programs.

Public building means any building which is open to the public during normal business hours, except exempted buildings, including:

(a) Any building which provides facilities or shelter for public assembly, or which is used for educational office or institutional purposes;

(b) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retail merchandise;

(c) Any portion of an industrial plant building used primarily as office space; or

(d) Any building owned by a State or political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings.

Public transportation means any scheduled or nonscheduled transportation service for public use.

Renewable-resource energy measure means a measure which is identified as a renewable resource energy measure in accordance with Subpart D of 10 CFR Part 450.

Residential building means any structure which is constructed for residential occupancy.

Secretary means the Secretary of DOE.

State means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

Supplemental plan means a supplemental State energy conservation plan including required program measures in accordance with § 420.7 and otherwise meeting the applicable provisions of this part.

Transit level of service means characteristics of transit service

provided which indicate its quantity, geographic area of coverage, frequency and quality (comfort, travel, time, fare and image).

Urban area traffic restriction means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.

Vanpool means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residences or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.

Variable working schedule means a flexible working schedule to facilitate carpool, vanpool and/or public transportation usage.

§ 420.3 Financial assistance.

(a) The Operations Office Manager shall provide financial assistance to each State having an approved annual application from funds available for any fiscal year to develop, modify or implement a plan, a supplemental plan, or both.

(b) Financial assistance to develop, implement or modify plans shall be allocated among the States from funds available for any fiscal year, based on the following formula:

(1) Forty percent of available funds will be divided on the basis of the population of the participating States as contained in the most recent census documents available from the Bureau of the Census, Department of Commerce, for all participating States at the time DOE needs to compute State formula shares;

(2) Twenty-five percent of available funds will be divided among the participating States equally; and

(3) Thirty-five percent of available funds will be divided on the basis of estimated energy savings in calendar year 1980 resulting from the implementation of State energy conservation plans; provided, however, that no State shall receive more than twenty percent of the funds available to be divided on the basis of the estimated energy savings in calendar year 1980.

(c) Financial assistance to develop, implement or modify supplemental plans shall be allocated among the States from funds available for any fiscal year, based on the following formula:

(1) Seventy-five percent of available funds will be divided on the basis of the population of the participating States as contained in the most recent census documents available from the Bureau of

the Census, Department of Commerce, for all participating States at the time DOE needs to compute State formula shares; and

(2) Twenty-five percent of available funds will be divided among the participating States equally.

(d) The budget period covered by the financial assistance provided to a State according to § 420.3 (b) and (c) will be set by the State within parameters established by DOE.

§ 420.4 Annual State applications.

(a) To be eligible for financial assistance under this part, a State shall submit to the Operations Office Manager an original and two copies of the annual application executed by the Governor. The date for submission of the annual State application shall be set by DOE.

(b) An application shall include with respect to either a plan or supplemental plan or both:

(1) A description of the energy conservation goals to be achieved by implementation of the State plan, why they were selected, how the attainment of the goals will be measured by the State, and how the program measures included in the State plan represent a strategy to achieve these goals;

(2) For the budget period for which financial assistance will be provided:

(i) A total program budget broken out by object class category and by source of funding;

(ii) A narrative statement detailing the nature of amendments and of new program measures;

(iii) For each program measure, a budget and listing of milestones; and

(iv) An explanation of how the minimum criteria for required program measures prescribed in § 420.6 for plans and § 420.7 for supplemental plans shall be satisfied.

(3) A detailed description of the increase or decrease in environmental residuals expected from implementation of either a plan or supplemental plan, or both, defined insofar as possible through the use of information to be provided by DOE, and an indication of how these environmental factors were considered in the selection of program measures.

(c) The Governor may request an extension of the annual submission date by submitting a written request to the Operations Office Manager not less than 15 days prior to the annual submission date. The extension shall be granted only if, in the Operations Office Manager's judgment, acceptable and substantial justification is shown, and the extension would further objectives of the Act.

(Approved by the Office of Management and Budget under control numbers 1904-0026 and 1901-0127)

§ 420.5 Review and approval of annual State applications and State plans.

(a) The Operations Office Manager shall review each timely annual application and provide financial assistance if he or she determines that:

(1) The application conforms to the requirements of this part;

(2) The proposed program measures are consistent with a State's achievement of its energy conservation goals in accordance with § 420.4;

(3) The provisions of the application regarding program measures satisfy the minimum program requirements prescribed by § 420.6.

(b) If the annual application is not approved according to paragraph (a) of this section, the Operations Office Manager shall return it to the State together with a written statement describing why the annual application fails to meet the requirements of this part. The State will be given a reasonable period of time, as determined by the Operations Office Manager, to amend its annual application and submit it for reconsideration according to paragraph (a) of this section.

§ 420.6 Minimum criteria for required program measures for plans.

A plan shall satisfy all of the following minimum criteria for required program measures.

(a) Mandatory lighting efficiency standards for public buildings shall:

(1) Be implemented throughout the State, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

(2) Apply to all public buildings above a certain size, as determined by the State;

(3) For new public buildings, be no less stringent than provisions of Section 9 of ASHRAE 90-75; and

(4) For existing public buildings, contain the elements deemed appropriate by the State.

(b) Program measures to promote the availability and use of carpools, vanpools, and public transportation shall:

(1) Have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized area with a population of 50,000 or more:

(i) A carpool/vanpool matching and promotion campaign;

(ii) Park-and-ride lots;

(iii) Preferential traffic control for carpools and public transportation patrons;

(iv) preferential parking for carpools and vanpools;

(v) Variable working schedules;

(vi) Improvement in transit level of service for public transportation;

(vii) Exemption of carpools and vanpools from regulated carrier status;

(viii) Parking taxes, parking fee regulations or surcharge on parking costs;

(ix) Full-cost parking fees for State and/or local government employees;

(x) Urban area traffic restrictions;

(xi) Geographical or time restrictions on automobile use; or

(xii) Area or facility tolls; and

(2) Be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.

(c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—

(1) With respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and

(2) Contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.

(d) Mandatory thermal efficiency standards for new and renovated buildings shall—

(1) Be implemented throughout the State, with respect to all buildings other than exempted buildings, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

(2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;

(3) For all new commercial buildings, be no less stringent than a standard consistent with provisions of Sections 4-9 of ASHRAE 90-75, unless the operation of Section 327 of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6297, renders

reliance on such standard to be impracticable;

(4) For all new residential buildings, be no less stringent than either the HUD minimum property standards or a standard consistent with the provisions of Sections 4-9 of ASHRAE 90-75, unless the operation of Section 327 of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6297, renders reliance on such standards to be impracticable; and

(5) For renovated buildings:

(i) Apply to those buildings determined by the State to be renovated buildings; and

(ii) Contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.

(e) A traffic law or regulation which permits the operator of a motor vehicle to make a right turn at a red light after stopping shall:

(1) Be in a State's motor vehicle code and under implementation throughout all political subdivisions of the State, except as provided in paragraph (e)(3) of this section;

(2) Permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety; and

(3) For any State without such traffic law or regulation in effect before December 31, 1978, be ready for implementation by June 27, 1979, and fully meet the requirements of paragraphs (e)(1) and (2) of this section thereafter.

§ 420.7 Minimum criteria for required program measures for supplemental plans.

A supplemental plan shall satisfy all of the following minimum criteria for required measures.

(a) Procedures for carrying out a continuing public education effort to increase significantly public awareness of the energy and cost savings which are likely to result from the implementation, including implementation through group efforts, of energy measures shall:

(1) Be under implementation; and
(2) Provide a public awareness program regarding energy audits with respect to buildings and industrial plants which at least includes a campaign publicizing the availability of energy audits in at least one urbanized area with a population greater than 50,000 or in the largest urbanized area within a State if the State does not have an urbanized area with a population of 50,000 or more. The campaign must

make clear reference to the range of technical assistance available to the owner or occupant of the building or industrial plant and provide a point of contact with the organization administering the energy audits, including a telephone number;

(b) Procedures for carrying out a continuing public education effort to increase significantly public awareness of information and other assistance, including information as to available technical assistance, which is or may be available with respect to the planning, financing, installing, and monitoring the effectiveness of measures likely to conserve, or to improve efficiency in the use of energy, including energy measures shall:

(1) Be in place and under implementation; and

(2) Contain the elements considered appropriate by a State.

(c) Procedures for ensuring that effective coordination exists among various local, State and Federal energy conservation programs within and affecting such State, including the comprehensive energy extension service program, under 10 CFR Part 465, shall:

(1) Be in place and under implementation; and

(2) Contain provisions for activities considered appropriate by a State such as coordinating local and State agencies to prevent duplication of energy conservation activities or conducting public hearings to ensure that individuals and groups concerned with program measures to be incorporated in a plan or supplemental plan and all other energy conservation programs in the State, shall be afforded the opportunity to participate in their development, implementation, and modification.

(d) Procedures for encouraging and for carrying out energy audits with respect to buildings and industrial plants shall:

(1) Be under implementation throughout all political subdivisions of the State;

(2) Be in accordance with Subpart B of the 10 CFR Part 450; and

(3) Provide and make available, to the extent feasible, Class A energy audits in at least one political subdivision for the buildings or industrial plants in at least one of the following categories and as many Class C energy audits as are practicable within the State in the remaining categories:

- (i) Apartment buildings;
- (ii) Educational institutions;
- (iii) Hospitals;
- (iv) Hotels and motels;
- (v) Industrial plants;
- (vi) Office buildings;
- (vii) Restaurants;

(viii) Retail stores;

(ix) Transportation terminals; and

(x) Warehouses and storage facilities; and

(4) Make available Class B or C audits to all individuals, as requested by such individuals, who are occupants of residential dwelling units in a State at no direct cost to those persons.

§ 420.8 Extensions for compliance with required program measures.

An extension of time by which a required program measure must be ready for implementation may be granted if DOE determines that the extension is justified. A written request for an extension, with accompanying justification and an action plan acceptable to DOE for achieving compliance in the shortest reasonable time, shall be made to the appropriate Operations Office Manager. Any extension shall be only for the shortest reasonable time that DOE determines necessary to achieve compliance. The action plan shall contain a schedule for full compliance and shall identify and make the most reasonable commitment possible to provision of the resources necessary for achieving the scheduled compliance.

§ 420.9 Administrative review.

(a) If the Operations Office Manager intends to deny an annual State application resubmitted by the Governor according to § 420.5(b) or refuses to accept an annual State application resubmitted by the Governor after the time period referred to in § 420.5(b) has expired, the Operations Office Manager shall give notice to the Governor.

(b) If the Operations Office Manager determines that implementation of a State plan approved according to § 420.5 fails to meet the requirements of this part, the Secretary shall give notice to the Governor of his or her intent to terminate or suspend financial assistance to the grantee.

(c) The notice required by paragraphs (a) or (b) of this section shall be issued in writing by registered mail with return receipt requested and include:

(1) A statement of the reasons for the intended denial, termination or suspension of financial assistance, including an explanation of whether any amendments or other actions would result in compliance with this part;

(2) The date, place and time of a public hearing to be held by a review panel concerning the intended denial, termination or suspension of financial assistance, the hearing to be held within 15 working days after the date of receipt by the Governor of the notice; and

(3) The manner in which views may be presented.

(d) The Governor may submit written views with supporting data to the Operations Office Manager on or prior to the date of the public hearing and shall be offered an opportunity to make an oral presentation at the public hearing.

(e) No person who is a member of the SECP office shall be a member of the review panel. The review panel shall be appointed by the Operations Office Manager and shall consist of:

(1) One person generally representative of State interests other than a person who represents the interests of the State whose application is being considered;

(2) One person representative of DOE; and

(3) One person representative of the SECP target audiences in the State affected.

(f) The review panel shall consider all relevant views and data submitted on or prior to the date of the public hearing. The review panel shall submit a written report containing its findings and recommendations to the Operations Office Manager within 10 working days after the date of the public hearing.

(g) The Operations Office Manager shall submit the report, together with his or her recommendations, to the Secretary within 5 working days after receipt of the report.

(h) The Secretary shall issue a final determination, accompanied by a statement of the reasons for the actions taken, within 10 working days after receipt of the submission from the Operations Office Manager.

(i) Upon issuance of the notice referred to in paragraphs (a) and (b) of this section, the Secretary may suspend financial assistance to the grantee pending a final determination. If the Secretary makes a final determination adverse to the grantee, the Operations Office Manager may terminate continued financial assistance to the grantee.

§ 420.10 Technical assistance.

At the request of the Governor of any State to DOE and subject to the availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

§ 420.11 Reports.

Each State receiving financial assistance under this part shall submit to the Operations Office Manager:

(a) A quarterly program performance report and a quarterly financial status report. The reports shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a plan or supplemental plan. The reports shall be submitted within 30 days following the end of each calendar year quarter.

(b) An annual energy savings report. The report shall contain such information concerning energy savings as the Secretary may prescribe and shall be submitted once a year at a time determined by the Secretary.

(Approved by the Office of Management and Budget under control numbers 1904-0026 and 1901-0127)

§ 420.12 Prohibited expenditures.

(a) No financial assistance provided to a State under this part shall be used:

(1) for construction, such as construction of mass transit systems and exclusive bus lanes, or for construction or repair of buildings or structures;

(2) to purchase land, a building or structure or any interest therein;

(3) to subsidize fares for public transportation;

(4) to subsidize utility rate demonstrations or State tax credits for energy conservation;

(5) to conduct or purchase equipment to conduct research, development or demonstration of conservation techniques and technologies not commercially available; or

(6) to purchase or install equipment or materials for energy conservation building retrofits or weatherization, except that this provision shall not

prevent such financial assistance from being used to reduce the interest rate charged on loans of non-SECP funds made by a State or financial institutions to fund the purchase or installation, or both, of equipment or materials for energy conservation building retrofits or weatherization.

(b) No more than 20 percent of the financial assistance awarded to the State for this program shall be used to purchase office supplies, library materials, or other equipment whose purchase is not otherwise prohibited by this section.

(c) Demonstrations of commercially available conservation techniques and technologies are permitted, and are not subject to the prohibitions of § 420.12(a) (1) and (6), or to the limitation on equipment purchases of § 420.12(b).

(d) A State may use regular or revolving loan mechanisms to fund SECP services which are consistent with this Part and which are included in the State's approved SECP plan. The State may use loan repayments and any interest on the loan funds only for activities which are consistent with this Part and which are included in the State's approved SECP plan.

§ 420.13 Administration of financial assistance.

Grants provided under this part shall comply with applicable law including, but without limitation, the requirements of:

(a) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968;"

(b) DOE Financial Assistance Rules (10 CFR Part 600); and

(c) Other procedures which DOE may from time to time prescribe for the administration of financial assistance under this part.

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**Tuesday
August 30, 1983**

Part III

Department of Education

**Pell Grant Program; Expected Family
Contribution Schedule, 1984-85 Award
Year; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 683 and 690

Pell Grant Program—Schedule of Expected Family Contributions; Student Assistance General Provisions, National Direct Student Loan Program, College Work-Study Program, Supplemental Educational Opportunity Grant Program, PLUS Program, and Pell Grant Program—Definition of Independent Student

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Pell Grant Expected Family Contribution Schedule for the 1984-85 award year based on Section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983, Pub. L. 98-79. These regulations supersede the final regulations that were published in the Federal Register on May 13, 1983.

Further, the Secretary issues final regulations setting forth the definition of an "independent student" for the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, Guaranteed Student Loan and PLUS Programs based on Section 4 of the same Act.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. It should be noted, however, that these regulatory amendments apply only to the award of student financial assistance under the above noted programs for periods of enrollment beginning on or after July 1, 1984. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, Chief, Pell Grant Policy Section or David Morgan, Pell Grant Program Specialist, Office of Student Financial Assistance, U.S. Department of Education, [ROB-3, Room 4318], 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472-4300.

SUPPLEMENTARY INFORMATION:

1. Pell Grant Schedule of Expected Family Contributions for the 1984-85 Award Year

Background

On May 13, 1983, the Secretary published final regulations setting forth the schedule of expected family contributions for the 1984-85 award year

for the Pell Grant Program. Those regulations, in accordance with Section 482 of the Higher Education Act of 1965 as amended, made several changes to the Pell Grant expected family contribution schedule used in the 1983-84 award year, such as the exclusion of home equity, the use of state and local taxes, and a higher assessment rate for parental income.

Pell Grant Family Contribution Schedule

Section 4 of the recently enacted Student Loan Consolidation and Technical Amendments Act of 1983, Pub. L. 98-79, requires the Secretary to use, with certain specified modifications, the Pell Grant Expected Family Contribution Schedule for the 1983-84 award year for the 1984-85 award year. The modifications include an increase in the family size offset, and other changes to reflect the most recent and relevant data, such as updating the calendar years used in the 1983-84 award year schedule.

Updating the Family Size Offsets to Account for Inflation

Section 4 of the Student Loan Consolidation and Technical Amendments Act requires that the family size offsets for the 1984-85 award year be based upon the offsets used in the 1983-84 award year schedule, adjusted by a percentage change equal to the percentage increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, rounded to the nearest \$100. The percentage change reflects the percentage difference between the arithmetic mean for the period of October 1, 1981, through September 30, 1982, and the arithmetic mean for the period of October 1, 1982, through September 30, 1983. The Secretary is directed to publish the family size offset tables for the 1984-85 award year schedule immediately after the Secretary of Labor publishes the Consumer Price Index for September, 1983. Therefore, the family size offsets will be published in the Federal Register at that time.

2. Definition of "Independent Student"

Section 4 of the Student Loan Consolidation and Technical Amendments Act provides that the Secretary use the criteria for determining independent student status in effect for the 1982-83 award year for the 1984-85 and 1985-86 award years. These criteria will be published as part of the Student Assistance General Provisions and will apply to the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study,

National Direct Student Loan and PLUS Programs. In 1984-85, the years of reference for determining independent student status are 1983 and 1984; however, for married students, the single relevant year is 1984.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations establish the definition of an independent student used in determining student eligibility for financial assistance under the title IV aid programs and revise the Pell Grant family contribution schedule. They do not have an impact on small entities.

List of Subjects

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Loan programs, Education, Grant programs—education, Student aid.

34 CFR Parts 674, 675, and 676

Colleges and universities, Education, Grant programs—education, Loan programs, Education, Student aid.

34 CFR Part 683

Administrative practices and procedures, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalogue of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063)

Dated: August 24, 1983.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as set forth below:

PART 690—PELL GRANT PROGRAM

1. Subparts C and D of Part 690 are revised to read as follows:

Subpart C—Expected Family Contribution for a Dependent Student

Sec.

- 690.31 Indicators of financial strength.
- 690.32 Special definitions.
- 690.33 Effective family income.
- 690.33a Effective student income.
- 690.34 Computation of the expected family contribution for a dependent student from expected family income.
- 690.34a Computation of the expected family contribution for a dependent student from the effective student income.
- 690.35 Computation of the expected contribution from parental assets.
- 690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.
- 690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).
- 690.38 Computation of the total expected family contribution.
- 690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

Subpart D—Expected Family Contribution for an Independent Student

- 690.41 Indicators of financial strength.
- 690.42 Special definitions.
- 690.43 Effective family income.
- 690.44 Computation of the expected family contribution for an independent student from the effective family income.
- 690.45 Computation of the expected contribution from the assets of the independent student (and spouse).
- 690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.
- 690.47 [Reserved]
- 690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

Subpart C—Expected Family Contribution for a Dependent Student

§ 690.31 Indicators of financial strength.

"Expected family contribution" for a dependent student means the amount that the student and his or her family may reasonably be expected to

contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for a dependent student:

- (a) The effective incomes of (1) the student and his or her spouse, and (2) the student's parent(s).
- (b) The number of family members in the household of the student's parent(s).
- (c) The number of family members in the household of the student's parent(s) who are enrolled in, on at least a half-time basis, a program of postsecondary education.
- (d) The assets of (1) the student and his or her spouse, and (2) the student's parent(s).
- (e) The marital status of the student.
- (f) The unusual medical expenses of the student's parents.
- (g) The additional expenses incurred when both parents of the student are employed or when a family is headed by a single parent who is employed.
- (h) The tuition paid by the student's parents for dependent children, other than the student, who are enrolled in an elementary or secondary school.

(Sec. 5, Pub. L. 97-301 as amended by sec. 4, Pub. L. 98-79)

§ 690.32 Special definitions.

For purposes of this subpart:

"Assets" means cash on hand, including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment, and business inventory. However, for Native American students, the following shall not be considered as an asset of the student or his or her family in determining the expected family contribution:

- (a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).
- (b) Any property that may not be sold or encumbered without the consent of the Secretary of Interior, or
- (c) Any other property held in trust for the student or his family by the United States Government.

"Business assets" means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery and other equipment, patents, franchise rights, and copyrights.

"Dependent of the student's parents" means:

- (a) The student,

(b) Any of the student's dependent children,

(c) Dependent children of the student's parents including those children who have been determined as to be "dependent students" when applying for Title IV student assistance, and

(d) Other persons (except the student's spouse) who live with and receive more than one-half of their support from the parents and will continue to receive more than half of their support from the parents during the 1984-85 award year.

"Dependent student" means any student who does not qualify as an independent student as defined in 34 CFR 688.1a.

"Dependent student offset" means (a) an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse, plus (b) the portion of negative parental discretionary income that will not be used to offset the normal contribution from parental assets.

"Effective family income" and "effective income of the student and spouse" are described in §§ 690.33 and 690.33a respectively.

"Employment expense offset" means an allowance to meet expenses relating to employment when both parents are employed or when a parent qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Family size offset" means an allowance to meet the subsistence expenses of a family, including food, shelter, clothing, and other basic needs. This offset is derived from the "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration.

"Farm assets" means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"Federal income tax" means (a) the tax on income paid to the U.S. Government or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions, or (c) the comparable taxes paid to the central government of a foreign country.

"Legal guardian" means an individual who has been appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code that were paid in 1983, unless the student files an application with the Secretary under the provisions of § 690.39. In that case the expenses reported are those paid in 1984.

"Net assets" means the current market value at the time of application of the assets included in the definition of "assets" minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother, father or legal guardian. An adoptive parent is considered to be the student's mother or father.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.33 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income taxes paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, and § 690.39,—

(1) The sum received in 1983 by the student's parents from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax is paid except for Social Security educational benefits received on account of the student. Examples of income to be reported include child support payments and income from income maintenance programs such as welfare benefits.

(2) One-half of any veteran's benefits to be paid to the student under chapters 34 and 35 of the United States Code for the 1984-85 award year.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.),

or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.)

(d) For a student whose parents are divorced or separated, the following procedures apply for reporting a parent's income to determine the annual adjusted family income—

(1) Report only the income, as described in paragraph (b) of this section, of the parent with whom the student resided for the greater portion of the 12 month period preceding the date of the application.

(2) If the preceding criterion does not apply, report only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(3) If neither of the preceding criteria apply, include only the income of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

(e) If either of the parents have died, the student shall report only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(f) The following rule applies if either a parent whose income is taken into account under paragraph (d) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (d)(3) of this section, has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if, in either 1983 or 1984, the student—

(1) Has received or will receive financial assistance of more than \$750 in either of those years from that spouse, or

(2) Has lived or will live for more than six weeks in either of those years in the home of the parent and that spouse.

(g) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in paragraph (b)(2) of this section.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.33a Effective student income.

(a) Effective student income is the annual adjusted income of the student (and spouse for a married student) minus the Federal income taxes paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant. However, if estimated income is used, as provided by paragraph (f) of this section, estimated income taxes will not be subtracted in determining the effective student income.

(b) "Annual adjusted income of the student and spouse" means, except as

provided in paragraphs (c), (d), (e) and (f) of this section and § 690.39, the sum received in 1983 by the student and spouse from—

(1) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(2) Investment income upon which no income tax need be paid. An example of such income is the interest on municipal bonds; and

(3) Other income upon which no Federal income tax is paid except for Social Security educational benefits paid to the student. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).

(d) If a student is divorced or separated, or if his or her spouse has died, the spouse's income shall not be considered in determining the "annual adjusted gross income of the student and spouse".

(e) The annual adjusted income of the student and spouse does not include any student financial assistance.

(f) If a student estimates that his or her income plus the income of his or her spouse, in the period of June 1, 1984 through May 31, 1985 will not exceed 60 percent of effective student income for 1983, effective student income will be the income estimated for that period. Estimated income includes only the income categories listed in paragraph (b) of this section.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income.

The expected family contribution for a dependent student from effective family income is calculated as follows:

(a) Determine the parents' discretionary income by deducting the following offsets from the effective family income:

(1) (i) A family size offset. (The Secretary determines the amount of the family size offsets in accordance with section 5 of the Student Financial Assistance Technical Amendments Act of 1982 as amended by the Student Loan Consolidation and Technical Amendments Act of 1983. The Secretary

publishes a table in the Federal Register setting forth the offsets immediately after the Secretary of Labor publishes the Consumer Price Index for September.)

(ii) In determining the family size, the following rules apply—

(A) If the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents.

(B) If the parents are divorced or separated, family members include the parent whose income is included in computing the effective family income and that parent's dependents.

(C) If the parents are divorced and the parent whose income is included in computing the effective family income has remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those people referenced in paragraph (a)(1)(ii)(B) of this section, the new spouse and any dependents of the new spouse if that spouse's income is included in determining the effective family income.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. The expenses that may be reported are those expenses paid by the student's parents during 1983, unless the student files an application with the Secretary under the provisions of § 690.39. In that case, the expenses reported will be those paid in 1984. The expenses of both parents are included only if the incomes of both are subject to inclusion in determining the effective family income. Similarly, a stepparent's expenses are included only if his or her income was subject to inclusion.

(3) An employment expense offset in the amount specified as follows—

(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of \$1,500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of \$1,500 or 50 percent of his or her earned income. The earned income figure to be used in all cases is that figure for 1983 unless the student files an application with the Secretary under the provisions of § 690.39. In that case, the figure to be used is the one for 1984.

(4) An educational expense offset equal to the tuition paid by the student's parents for dependent children, other

than the student, enrolled in elementary or secondary school. The tuition which may be reported is the tuition paid in 1983 unless the student files an application with the Secretary under the provisions of § 690.39. In that case, the tuition reported will be that paid in 1984.

(b) If the parents' discretionary income is a positive amount, determine the expected contribution from the effective family income according to the following chart. If the parent's discretionary income is negative, there is no expected contribution from income.

| Discretionary income | Expected contribution |
|----------------------|----------------------------------------|
| \$0 to \$5,000 | 11% of discretionary income. |
| \$5,001 to 10,000 | \$550 + 13% of amount over \$5,000. |
| \$10,001 to 15,000 | \$1,200 + 18% of amount over \$10,000. |
| \$15,001 and above | \$2,100 + 25% of amount over \$15,000. |

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.34a Computation of the expected family contribution for a dependent student from the effective student income.

The expected family contribution for a dependent student from effective student income is calculated as follows:

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

(1) If the parental discretionary income is positive, the dependent student offset, which is derived from the family size offset, will be the amount published in the Federal Register along with the family size offset.

(See § 690.34(a)(1)(i))

(2) If the parental discretionary income is negative, the relevant offset in paragraph (a)(1) of this section is increased by the amount of negative parental discretionary income that remains after subtracting the amount of the negative parental discretionary income that will be used as an offset against the contribution from parental assets in § 690.35(d).

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

(1) 75 percent for the single dependent student, or

(2) 25 percent for the married dependent student.

(c) If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.35 Computation of the expected contribution from parental assets.

The expected contribution from parental assets is determined in the following manner:

(a) If the parental assets include a principal place of residence, deduct \$25,000 from the net value of the principal place of residence. If this subtraction produces a negative number, it shall be changed to zero.

(b) If the parental assets include assets other than a principal place of residence and other than farm and business assets, deduct \$25,000 from the net value of those other assets. If this subtraction produces a negative number, it shall be changed to zero.

(c)(1) If the parental assets include farm and/or business assets, deduct \$80,000 from the net value of the farm and/or business assets. If this subtraction produces a negative number, it shall be changed to zero.

(2) If the sum of the farm and business deduction and the deductions in paragraph (a) and (b) of this section exceeds \$100,000, the farm and business deduction shall be reduced by the amount that that sum exceeds \$100,000.

(d)(1) Normally, the expected contribution from parental assets equals five percent of the total of the results obtained in paragraph (a), (b), and (c) of this section.

(2) However, if the calculation of discretionary income required by § 690.34(a) produces a negative number, the expected contribution from parental assets, calculated under paragraph (d)(1) of this section, shall be reduced by the amount of that negative discretionary income. If this subtraction produces a negative number, it shall be changed to zero.

(e)(1) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

(2) However, if that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income also is included under § 690.33, the assets of that parent's spouse shall also be included.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from effective family income as determined in § 690.34(b) is added to the amount expected from parental assets as determined in § 690.35.

(b)(1) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

| Number of family members enrolled in programs of postsecondary education | Expected contribution per student from combined contributions |
|--------------------------------------------------------------------------|---------------------------------------------------------------|
| 1 | 100 percent of the contribution determined in paragraph (a). |
| 2 | 70 percent of the contribution determined in paragraph (a). |
| 3 | 50 percent of the contribution determined in paragraph (a). |
| 4 or more | 40 percent of the contribution determined in paragraph (a). |

(2) Family members are those persons referenced in § 690.34(a)(1).

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).

(a) The expected contribution from the net assets of a single dependent student equals 33 percent of the amount of those assets.

(b) The expected contribution from the assets of the married dependent student and spouse is determined in the following manner:

(1) Deduct an asset reserve of \$25,000 from the net assets. If this subtraction produces a negative number, it shall be changed to zero.

(2) The expected contribution from the net assets of the dependent student and spouse equals five percent of the remainder obtained in paragraph (b)(1) of this section.

(c) If the married dependent student is separated, only his or her assets shall be considered.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.38 Computation of the total expected family contribution.

For each grant the total expected family contribution is the sum of—

(a) The expected contribution from the effective family income and parental assets as determined in § 690.36.

(b) The expected contribution from effective student income as determined in § 690.34a, and

(c) The expected contribution from the student's (and spouse's) assets as determined in § 690.37.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1984 for effective family income, if—

(1) A parent or stepparent whose 1983 income from work must be reported under § 690.33 has lost his or her job for at least 10 weeks during 1984.

(2) A parent or stepparent whose 1983 income from work must be reported under § 690.33 has been unable to pursue normal income-producing activities for at least 10 weeks during 1984 because of the occurrence—in 1983 or 1984—of (i) a disability, or (ii) a natural disaster.

(3) A parent or stepparent whose income must be reported under § 690.33 received unemployment compensation or nontaxable income in 1983 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1984 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include Social Security benefits, welfare, court ordered child support, etc.

(4) The parent(s) of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under § 690.33 for this condition to apply, or

(5) A parent or stepparent whose 1983 income must be reported under § 690.33 has died after the submission of an earlier application for 1984-85. However, if the parent referred to in this paragraph is the last surviving parent with whom the student has or will have a dependency relationship according to § 690.42, the student must file an application under § 690.48(a)(7) if he or she wishes to use income data from 1984.

(b) For an application submitted under paragraph (a) of this section, the student (and parent) shall include the income already received for 1984 and an estimate of the income to be received for the remainder of the year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

Subpart D—Expected Family Contribution for an Independent Student

§ 690.41 Indicators of financial strength.

"Expected family contribution" for an independent student means the amount that the student and his or her spouse may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for an independent student:

(a) The effective family income of the independent student and spouse.

(b) The number of family members in the household of the student and spouse.

(c) The number of family members in the household of the student and spouse who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of the student and spouse.

(e) The unusual medical expenses of the student and spouse.

(f) The additional expenses incurred when both the student and spouse are employed or when the employed student qualified as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(g) The tuition paid by the student or spouse for dependent children who are enrolled in an elementary or secondary school.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.42 Special definitions.

The definitions of "assets", "business assets", "farm assets", "family size offset", "Federal income tax", "legal guardian", "local income tax", "medical expense", "net assets", and "parent", are set forth in § 690.32.

"Dependent" means (a) the student's spouse (unless separated or divorced

from the student), (b) any of the student's or spouse's children who qualify as dependent students (with respect to the student or spouse) and are attending an institution of higher education on at least a half-time basis, (c) other dependent children of the student or spouse, and (d) other persons who live with and receive more than one-half of their support from the student or spouse and will continue to receive more than one-half of their support from the student or spouse during the 1984-85 award period.

"Effective family income" is described in § 690.43.

"Employment expense offset" means an allowance to meet expenses relating to employment when both the independent student and his or her spouse are employed or when the independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Independent student" is a student who meets the definition set forth in 34 CFR 668.1a.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.43 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), and (e) of this section and § 690.48—

(1) The sum received in 1983 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no Federal income tax is paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax is paid except for Social Security educational benefits paid to the student. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(2) One-half of any veteran's benefits to be paid to a student under Chapters 34 and 35 of Title 38, United States Code for the 1984-85 award year.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.),

or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).

(d) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the annual adjusted family income.

(e) The annual adjusted family income does not include any student financial assistance.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.44 Computation of the expected family contribution for an independent student from the effective family income.

The expected family contribution for the independent student from effective family income is calculated as follows:

(a) Determine discretionary income by deducting the following offsets from the effective family income.

(1)(i) A family size offset. (The Secretary determines the amount of the family size offsets in accordance with section 5 of the Student Financial Assistance Technical Amendments Act of 1982 as amended by the Student Loan Consolidation and Technical Amendments Act of 1983. The Secretary publishes a table in the *Federal Register* setting forth the offsets immediately after the Secretary of Labor publishes the Consumer Price Index for September.)

(ii) In determining the family size, the following rules apply—

(A) Family members normally include the student and spouse and their dependents.

(B) However, if the student is divorced or separated, the spouse (ex-spouse) and his or her dependents are not counted in the family size.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student and spouse in 1983, unless the student files an application with the Secretary under the provisions of § 690.48. In that case, the expenses reported will be those paid in 1984. The expenses of both the student and spouse are included only if the incomes of both are subject to inclusion in determining the effective family income.

(3) An employment expense offset in the amount specified as follows—

(i) If both the student and spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of \$1,500 or 50 percent of the earned income (income earned by work)

of the person with the lesser earned income.

(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of \$1,500 or 50 percent of his or her earned income.

The earned income figure to be used in all cases is that figure for 1983, unless the student files an application with the Secretary under the provisions of § 690.48. In that case the figure to be used is the one for 1984.

(4) An educational expense offset equal to the tuition paid by the student and spouse for dependent children enrolled in elementary or secondary school. The tuition that may be reported is the tuition paid in 1983, unless the student files an application with the Secretary under the provisions of § 690.48. In that case the tuition reported will be that paid in 1984.

(b) If the discretionary income is a positive amount, multiply it by one of the following figures to determine the expected family contribution from the effective family income of the student and spouse:

(1) 75 percent for the single independent student with no dependents; or

(2) 25 percent for the independent student with one or more dependents (including a spouse).

If the discretionary income is negative, there is no expected family contribution from effective family income.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.45 Computation of the expected contribution from the assets of the independent student (and spouse).

(a)(1) Normally, the expected contribution from the net assets of the single independent student with no dependents equals 33 percent of the amount of those assets.

(2) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's assets calculated under paragraph (a)(1) of this section shall be reduced by the amount of that negative discretionary income. If this subtraction produces a negative number, it shall be changed to zero.

(b) For an independent student with dependents, the expected contribution from the assets of the student (and spouse) is determined in the following manner:

(1) If the assets include a principal place of residence, deduct \$25,000 from the net value of the principal place of residence. If this subtraction produces a

negative number, it shall be changed to zero.

(2) If the assets include assets other than a principal place of residence and other than farm and business assets, deduct \$25,000 from the net value of those other assets. If this subtraction produces a negative number, it shall be changed to zero.

(3)(i) If the assets include farm and/or business assets, deduct \$80,000 from the net value of the farm and/or business assets. If this subtraction produces a negative number, it shall be changed to zero.

(ii) If the sum of the farm and business deduction and the deductions in paragraphs (b) (1) and (2) of this section exceeds \$100,000, the farm and business deduction shall be reduced by the amount that that sum exceeds \$100,000.

(4)(i) Normally, the expected contribution from the assets of the independent student with dependents equals five percent of the total of the results obtained in paragraphs (b) (1), (2), and (3) of this section.

(ii) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's (and spouse's) assets calculated under paragraph (b)(4)(i) of this section shall be reduced by the amount of that negative discretionary income. If this subtraction produces a negative number, it shall be reduced to zero.

(5) If the married independent student with dependents is separated, only his or her assets shall be considered.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from family income as determined in § 690.44 is added to the amount expected from assets as determined in § 690.45.

(b) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

| Number of family members enrolled in programs of postsecondary education | Expected contribution per student from combined contributions |
|--------------------------------------------------------------------------|---------------------------------------------------------------|
| 1 | 100 percent of the contribution determined in paragraph (a). |
| 2 | 70 percent of the contribution determined in paragraph (a). |
| 3 | 50 percent of the contribution determined in paragraph (a). |
| 4 | 40 percent of the contribution determined in paragraph (a). |

Family members are those persons referenced in § 690.44(a)(1).

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

§ 690.47 [Reserved]

§ 690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1984 for effective family income if—

(1) The student was employed full-time in 1983 (at least 35 hours per week for a minimum of 30 weeks during 1983) and is no longer employed full-time.

(2) A spouse whose 1983 income from work must be reported under § 690.43 has lost his or her job for at least 10 weeks during 1984.

(3) The student or spouse whose 1983 income from work must be reported under § 690.43 has been unable to pursue normal income-producing activities for at least 10 weeks during 1984 because of the occurrence—in 1983 or 1984—of (i) a disability or (ii) a natural disaster.

(4) The student or spouse whose income must be reported under § 690.43 received unemployment compensation or nontaxable income in 1983 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1984 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include welfare, court ordered child support, etc..

(5) The student has become separated or divorced after he or she submitted his or her application.

(6) A spouse whose 1983 income must be reported under § 690.43 has died after the submission of an earlier application for 1984 or 1985, or

(7) The student's last surviving parent with whom the student has or will have

a dependency relationship according to § 690.42 has died.

(b) For an application submitted under paragraph (a), the student shall include the income already received for 1984 and an estimate of the income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her spouse has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. A new § 668.1a is added to read as follows:

§ 668.1a Independent student.

(a) An independent student is a student whom the Secretary considers to be independent of his or her parents for purposes of the Pell Grant, Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS), National Direct Student Loan (NDSL), Guaranteed Student Loan (GSL), and PLUS Programs. The determination of whether the student is independent is based on the criteria set forth in paragraphs (b) through (d) of this section.

(b) *General criteria.* Subject to the provisions of paragraphs (c) and (d) of this section, a student qualifies as an independent student for an award year if the student—

(1) Does not, during any of the relevant years described in paragraph (c) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(2) Is not, for any of the relevant years described in paragraph (c) of this section, claimed as a dependent for Federal income tax purposes by such parent(s); and

(3) Does not, during any of the relevant years described in paragraph (c) of this section, receive financial assistance of more than \$750 from such parent(s).

(c) *Relevant years.* Except as provided in paragraph (d) of this section, to qualify as an independent student for any award year—

(1) An unmarried student must satisfy the criteria set forth in paragraph (b) of this section for the first calendar year of

an award year and the preceding calendar year; and

(2) A married student must satisfy the criteria set forth in paragraph (b) of this section for the first calendar year of the award year

(d) The Secretary considers any student to be an independent student if, before the end of the award year—

(1) The student's parents die; or

(2) The student is declared a ward of a court.

(e) As used in this section:

(1) "Award year" means the period of time from July 1 of one year through June 30 of the following year.

(2) "Parent" means a student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

(3) "Parent(s) for whom income must be reported" means a parent for whom income must be reported under § 690.33 of the Pell Grant Program regulations, 34 CFR 690.33. For this purpose, the references in § 690.33(d) to the date of the student's application shall be considered to be references to the date the student applies for a loan under the GSL or PLUS Programs or applies to have his expected family contribution determined under the Pell Grant, SEOG, CWS, or NDSL Programs.

20 U.S.C. 1082(c)(2) and Section 5 of Pub. L. 97-301 as amended by Section 4 of Pub. L. 98-79)

PARTS 674, 675 AND 676—[AMENDED]

§§ 674.2, 675.2, and 676.2 [Amended]

3. Sections 674.2, 675.2, and 676.2, respectively, are each amended by revising the definition heading of "Independent student (effective July 1,

1983)" to read "Independent student (effective July 1, 1983 through June 30, 1984)", and by adding immediately following that definition the definition of "Independent student (effective July 1, 1984)", to read as follows:

Independent student (effective July 1, 1984): A student who meets the definition of an "independent student" set forth in 34 CFR 668.1a.

PART 683—[AMENDED]

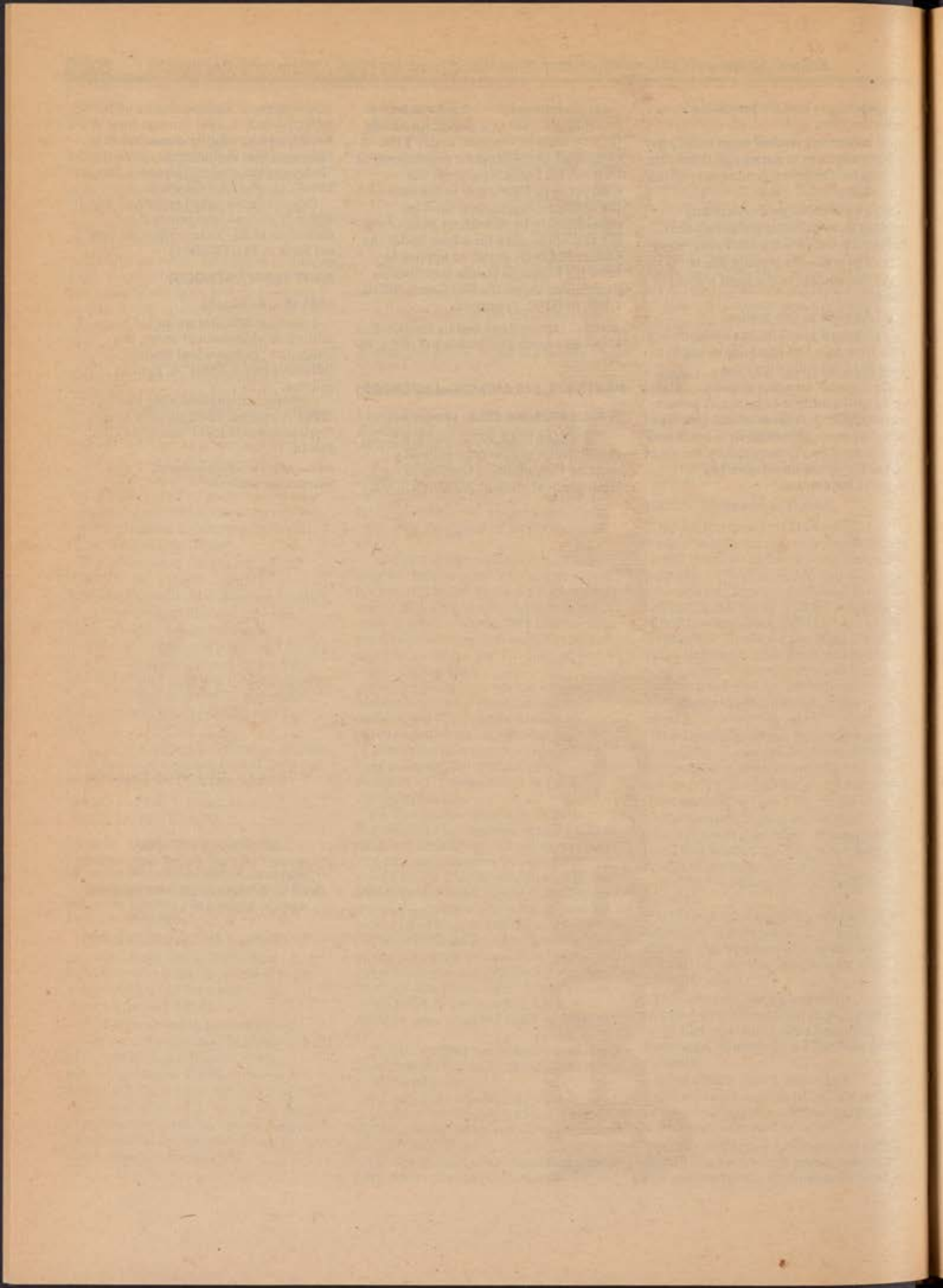
§ 683.10 [Amended]

4. Section 683.10 is amended by adding, in alphabetical order, the definition "Independent student (effective July 1, 1984)" to read as follows:

Independent student (effective July 1, 1984): A student who qualifies as an "independent student" under 34 CFR 668.1a.

[FR Doc. 83-23744 Filed 8-29-83; 8:45 am]

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Part IV

Department of Energy

**Office of Conservation and Renewable
Energy**

**Energy Conservation Program for
Consumer Products; Final Rule for
Refrigerators and Refrigerator-Freezers,
Freezers, Water Heaters, Room Air
Conditioners, Furnaces and Central Air
Conditioners**

DEPARTMENT OF ENERGY
Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products; Final Rule for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Furnaces and Central Air Conditioners

AGENCY: Office of Conservation and Renewable Energy, Energy.

ACTION: Final rule.

SUMMARY: As a general matter, the Energy Policy and Conservation Act, as amended, requires the Department of Energy to prescribe an energy efficiency standard for each of thirteen major household appliances, unless DOE determines by rule that a standard for a product will not result in significant conservation of energy, is not technologically feasible, or is not economically justified. Under the Act, any Federal rule, whether prescribing a standard or determining no standard, would preempt State and local standards and any other requirements with respect to energy efficiency or use of these products.

On April 2, 1982, DOE published a proposed rule that would determine that for eight products an energy efficiency standard would not result in significant conservation of energy or be economically justified. The April 2 proposed rule also proposed procedures governing how States could petition for exemption from the preemption of State and local efficiency or energy use standards and how manufacturers could petition to preempt State or local efficiency or energy use standards for which there were no preempting Federal rules.

DOE published a final rule on December 22, 1982, with respect to clothes dryers and kitchen ranges and ovens, two of the eight products covered by the April 2 notice, in which DOE determined that an energy efficiency standard for either of these products would not result in significant conservation of energy and would not be economically justified. In addition, DOE adopted at that time final procedures governing State and manufacturer petitions.

Today's final rule reflects DOE's final determinations with respect to the other six products: refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, furnaces and central air conditioners. For each of these products, except central air conditioners, DOE finds that an energy

efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to the sixth product, central air conditioners, DOE finds that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

DATES: Except for section 430.32, the effective date of this rule is September 29, 1983. Section 430.32 is effective February 27, 1984, except in a State that has filed pursuant to Subpart D a notice of petition before October 31, 1983, and a petition before December 28, 1983. The effective date of § 430.32 for States that have filed a petition is thirty days from the date on which DOE issues or denies a final rule concerning that petition.

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SUPPLEMENTARY INFORMATION:

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619,¹ creates the Energy Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. See section 322. The Secretary has not so classified any additional products.

¹ Part B of Title III of EPCA, as amended by the NECPA, is often referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 2801 et seq.

Under the Act the program consists essentially of three parts: testing, labeling, and mandatory minimum energy efficiency standards. The Department of Energy (DOE or Department), in consultation with the National Bureau of Standards, is required to establish test procedures for each of the covered products. Section 323(a)(2). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(1). All test procedures were required to be adopted not later than May 1, 1978. Section 323(a)(4) and (6). A test procedure is not required if DOE determined by rule that one could not be developed. Section 323(a)(6)(B). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE procedure. Section 323(c). Test procedures have been prescribed relating to all products, but, on the basis of continuing review, certain classes of products do not have currently applicable test procedures.

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of the covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). A rule is not required under section 324 if the FTC determines that disclosure of estimated annual operating costs is not likely to assist consumers in making purchasing decisions or is not economically feasible. Section 324(c). At the present time there is an FTC rule requiring labels under the Act for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, and refrigerators and refrigerator-freezers. 44 FR 66475 (November 19, 1979). The FTC has proposed a rule to require labels for central air conditioners. 45 FR 53340 (August 11, 1980).

For each of the covered products, DOE is required to establish mandatory energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(a)(1) and (c). The Act provides, however, that

no standard for a product is to be established if there is no test procedure for the product, or if DOE determines by rule either that establishment of a standard would not result in significant conservation of energy or that establishment of a standard is not technologically feasible or economically justified. Section 325(b). In determining whether an energy efficiency standard is economically justified, the Department is directed to determine whether the benefits of the standard exceed its burdens by weighing six specific factors, as well as any other factors DOE considers relevant. Section 325(d). The factors are:

- (1) The economic impact of the standard on the manufacturers and on the consumers of the product subject to such standard;
- (2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result from the imposition of the standard;
- (3) The total projected amount of energy savings likely to result directly from the imposition of the standard;
- (4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
- (5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard; and
- (6) The need of the Nation to conserve energy.

A rule establishing an energy efficiency standard for a product shall set different levels of efficiencies for different classes² of that product if they use a different kind of energy or have different capacity or performance related features that justify different levels of efficiencies. Section 325(f).

The Act specifies the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products are given priority under the Act. Section 325(g). These nine products are: refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, home heating equipment (other than furnaces), kitchen ranges and ovens, central air conditioners, and furnaces.

The procedures include a requirement for an advance notice of proposed rulemaking upon which interested

persons may make written comments. Section 325(i)(1). Thereafter, there is to be a notice of proposed rulemaking, upon which interested persons may make written and oral comments, including an opportunity to question those who make such comments with respect to disputed issues of material fact. Section 325(i)(3) and section 336(a)(1).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy is a rule that supersedes any State standard. Section 325(b). If, because there is no Federal rule, a State efficiency standard is not superseded, persons subject to it may petition DOE to have it superseded on the basis that there is no significant State or local interest sufficient to justify the regulation and such regulation unduly burdens interstate commerce. Section 327(b)(1). A State whose energy efficiency standard is superseded may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is a stricter standard. However, DOE cannot issue the requested rule if the State standard would unduly burden interstate commerce. Section 327(b)(3).

b. Background

The DOE published its advance notice of proposed rulemaking pursuant to section 325(i) for the nine first priority products on January 2, 1979. 44 FR 29. On December 13, 1979, the DOE published an advance notice of proposed rulemaking for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. 44 FR 72276. An advance notice for central air conditioners (heat pumps) was published on January 23, 1980. 45 FR 5602. These advance notices were designed to present a full discussion of the Department's views concerning the standards program and the process for its implementation. DOE also set forth its views concerning the criteria for selecting classes in each product type and the maximum technologically feasible efficiency standard for each class of product. DOE specifically requested comments on all matters presented in the advance notices. Public meetings were held throughout 1979 and

1980 to solicit the views of all concerned parties.

After receiving comments on the advance notices, on June 30, 1980, the DOE set forth its first proposed rulemaking for the nine products, 45 FR 43976, (hereafter referred to as the June 1980 proposal). The June 1980 proposal set forth the DOE's proposal concerning energy efficiency standards for these covered products. It also proposed procedures for processing petitions by States that sought exemption for regulations subject to the general preemption requirements of Section 327(a) of the Act. The June 1980 proposal considered comments received in response to the advance notice on these nine products and made changes in the DOE's initial determinations concerning classes for each covered product and the methods for determining energy efficiency standards. The June 1980 proposal was based upon five technical support documents which were made available for public review.

To encourage public participation in the rulemaking process, the DOE held a series of public meetings and hearings, starting in July 1980. Public hearings were conducted in Chicago and Washington in August 1980. As a result of these hearings and the solicitation of written comments, over 1,800 comments were received on the June 1980 proposal. These comments addressed all aspects of the rulemaking proposal including the establishment of classes in each covered product type, the feasibility of the standards selected for each covered product, the validity of the assumptions made in the technical support documents, the procedure for seeking exemptions for State regulations from preemption by the Federal standard, the effective date of a final regulation, the propriety of standards for small businesses, whether alternatives to regulations were practical, and the proposal for certification and enforcement procedures.

On December 17, 1980, the Department notified the Congress of its inability to make a final determination on the imposition of energy efficiency standards on the nine covered products by the statutory deadline of January 2, 1981. On February 23, 1981, DOE published a notice of its intent not to issue any energy efficiency standard until it fully studied the comments received on the June 30 proposal and made a thorough reassessment of the data supporting the proposal. 46 FR 13517.

On April 2, 1982, DOE issued a further notice of proposed rulemaking with respect to the nine priority products, 47

² Each covered product category may be made up of several classes.

FR 14424 (hereafter referred to as the April 1982 proposal). With respect to eight of the products DOE proposed to make a determination that a standard would not result in significant conservation of energy and would not be economically justified.³ The April 1982 proposal also proposed rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards as well as by manufacturers to obtain preemption of State or local standards. Two technical support documents—an Economic Analysis (EcAD) and an Engineering Analysis (EnAD)—supported the proposal.

Hearings were held on the April 1982 proposal over three days in Washington, D.C., in which 39 persons presented statements. Over 130 written comments were received during the initial comment period, and 36 additional written comments were made on earlier submitted comments.

In October 1981, the Natural Resources Defense Council (NRDC) and Consumers Union of the United States, Inc., brought suit against DOE for DOE's failure to adopt a final rule for the nine priority products by the statutory deadline of January 2, 1981. A settlement agreement adopted by the parties required DOE to adopt a final rule for these products (except home heating equipment, other than furnaces) by October 29, 1982. The agreement provided, however, for a modification of that deadline for good cause as approved by the court. Nevertheless, the agreement required that, if the entire rule could not be adopted by October 29, DOE would issue those portions of the rule for which determinations could be made.

Consequently, on December 22, 1982, DOE published a final rule in which the Department determined that energy efficiency standards were not warranted for clothes dryers and kitchen ranges and ovens. 47 FR 57198. (Hereafter referred to as the December 1982 final rule.)⁴ At that time, DOE also adopted final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption and by which manufacturers

might obtain preemption of a State or local standard not otherwise preempted.

In light of DOE's failure to adopt a final rule by October 29, 1982, the NRDC filed a motion on November 29, 1982, requesting the court to order DOE to promulgate final rules for all eight products by January 29, 1983. In this motion NRDC argued that, while NRDC believed the Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model) to be deficient, DOE could not take additional time to conduct further analyses or make any corrections. As DOE noted in responding to the court, the ORNL Model has been used since before June 1980 to determine the energy savings attributable to standards, a necessary determination whether the conclusion is to promulgate a substantive standard or a no-standard standard. It was not until the comments on the April 1982 proposed rule, however, that NRDC and others raised objections to the particular aspect of the Model that has drawn the greatest attention in this rulemaking. These objections were not dismissed out-of-hand but rather were considered and analyzed. Consequently, as noted in the December 1982 final rule, DOE was unable to make the October 29, 1982 deadline for a final rule for all eight products.

As indicated *infra*, DOE's analysis and review of the ORNL Model is an ongoing matter. In entering into a further settlement agreement with NRDC to issue these rules, DOE did not mean to suggest that all questions would have been resolved and all doubts dispelled concerning the Model. For reasons discussed at length *infra*, however, DOE concluded that within the time constraints of the Act, as enforced by NRDC, Consumers Union, and the court, the ORNL Model as used in this rule is the most reliable and objective means of determining energy savings attributable to a standard.⁵

³ NRDC, in a letter dated May 4, 1983, alleged that on March 28, 1983, the Assistant Secretary for Conservation and Renewable Energy met with representatives of the Association of Home Appliance Manufacturers (AHAM) and discussed this pending rule. While a meeting did take place, the discussion did not involve this rule but rather two aspects of the final rule adopted December 22, 1982—the standards upon which petitions for exemption from preemption would be judged and the percentage test for determining whether a given level of energy savings is significant. No change has been made in the standards or tests announced in the December 1982 final rule, nor would DOE consider any such changes without a further rulemaking on the subject.

II. General Discussion

a. General

As indicated above, this rulemaking, begun in January 1979, has been a lengthy and complex process. Millions of dollars have been spent by DOE in furtherance of the rulemaking; manufacturers, interest groups, and States have gone to great efforts not only to make known their views on the ultimate questions but also to expand both the data base and analytical criteria upon which the rulemaking is based. Accordingly, DOE wishes to thank all those who participated in the rulemaking for their efforts. Even where comments or recommendations were not adopted, the comments improved the process and assured that the final decision would be based on a full consideration of all the relevant factors.

Some commenters expressed their belief that DOE had prejudged the outcome of this rulemaking because of an inflexible policy commitment to avoiding mandatory appliance efficiency standards. DOE has acknowledged its general view that the marketplace, together with accurate consumer information, is more effective in improving appliance efficiency than are mandatory appliance standards. DOE, however, has confined its action upon this view to support of legislation that would repeal section 325 of the Act. DOE's consistent policy, moreover, has been that it must and will faithfully execute the law in the absence of any such congressional action. Thus, no prejudgment has been made in this rulemaking. The decisions have been founded on the record in accordance with the statutory terms and requirements.

The record, however, has changed substantially from the record before DOE in June 1980 when substantive standards were proposed for all products. As comments to the June 1980 proposal made clear, that proposal was widely criticized. In 1980, both the Justice Department and the White House's Regulatory Analysis Review Group severely criticized the economic analysis that underlay that proposed rule. The General Accounting Office has also criticized it. *See Improved Quality, Adequate Resources, and Consistent Oversight Needed if Regulatory Analysis is to Help Control Costs of Regulations* (1982), at 12. As a result of these and other comments, a number of changes were made to both the economic and engineering analysis, changes that were fully explained in the April 1982 proposal and supporting documents. With few exceptions, these

⁴ The April 1982 proposal did not propose any rule with respect to the product type "home heating equipment, not including furnaces" or with respect to that class of the product water heaters made up of heat pump water heaters or with respect to those classes of the product central air conditioners that are heat pumps.

⁵ The preamble to the December 1982 final rule is part of the record of this rulemaking, and DOE hereby incorporates it by reference.

changes were not criticized in the comments on the April 1982 proposal.⁶ As a result of comments on the April 1982 proposal, further changes were made or responses have been made indicating why DOE did not adopt the comment.⁷

As a result of all of these changes, the data generated by the various models and analyses have changed substantially from those in June 1980. Where required by changes in the data, of course, the conclusions to be drawn from the data have changed as well.

b. Maximum Technological Feasibility

Some commenters criticized DOE in its selection and use of criteria in the Engineering Analysis for choosing design options and candidate standard levels. These commenters argued that the predicted energy savings in the standards case would have been greater had DOE considered a broader range of options.

The comments on the April 1982 proposal addressed three issues: that DOE limited its consideration of possible standards levels to efficiency levels already in the marketplace, thereby ignoring advanced technologies that were available in prototype or could be developed; that DOE failed to consider some high efficiency products already in the marketplace; and that DOE restricted consideration to U.S. models only.

Maintaining that DOE should revise its criteria to include prototypes that could be available by 1987, NRDC, the American Council for an Energy Efficient Economy (ACEEE) and others contend that high efficiency prototype appliances have been developed and tested that substantially surpass, some by 26 percent, the efficiency levels of those currently on the market. Consumers Union added that the Engineering Analysis ignores the 5 year period manufacturers would have to bring products into compliance.

DOE has fully considered the comments suggesting that minimum energy efficiency standards should be analyzed at levels in excess of models available in the market, but has determined that the Act does not require such analyses. First, for the reasons given in the December 1982 final rule, see 47 FR 57211, it would be virtually

impossible to analyze possible standards at levels where the data to perform the analyses would be non-existent or largely speculative. Because the Act requires that potential standards be analyzed both as to the likely energy savings attributable to them as well as to their economic justification, the impossibility of meaningful analysis effectively bars the consideration of standards at such levels. Second, the Act specifically prohibits standards for a product (or class of product) if there is no applicable test procedure for which a final rule is being considered currently have applicable test procedures have been validated only with respect to currently marketed products. Experience cautions that advanced technologies for appliance efficiency might well make current test procedures inapplicable.⁸ Consequently, it would be improper under the Act to require a standard for which there was an applicable test procedure.

Where commenters specified particular prototypes they believed should be considered, DOE has addressed these particular models in the product-specific discussion.

The ACEEE, National Wildlife Federation, NRDC, the California Energy Commission and others gave examples of appliances now available in the marketplace that reportedly are substantially more efficient than the maximum levels considered by DOE.

The appliance designs mentioned included condensing furnaces, heat pump water heaters, and advanced designs of refrigerators and refrigerator-freezers.

As a general matter,⁹ the April 1982 proposal considered a standard level for each product at an efficiency level equal to the maximum efficiency of the product in the domestic market as of the comments on the June 1980 proposal. That is, the original engineering analysis prepared for the June 1980 proposal was updated and revised in light of comments on that proposal. Creating "cost books" (breakdowns of the costs of a given design option into its labor, purchased parts, materials, and investment components, which then can be used to evaluate fully potential standards levels) is a complex and involved affair. By February 1981 a new "cost book" had been completed with respect to the eight products. This was the last "cost book" prepared before the

April 1982 proposal, which was expected to be issued much earlier. After the April 1982 proposal, it would not have been possible to assess new models in the market for potential standard levels, change the "cost book," and then run all the computer models with this new data within a reasonable time period, and certainly not within the periods that were required by court-approved settlements with the NRDC and Consumers Union. Moreover, had DOE taken this additional time to change the "cost books" with all the delay that would have entailed, by the time of the final rule there would undoubtedly be still newer, more efficient products available in the market.

This reflects a general problem with a rulemaking that assesses the effects of potential standards, when over the time of the rulemaking the technology and marketed products develop and progress. DOE has continuously attempted to use the most recent, reliable data, where to do so would not inordinately delay the rulemaking.¹⁰ With respect to the potential standard levels, to have adjusted the "cost books" in light of the most recent products in the marketplace and then to have conducted the analyses based upon these new "cost books" would have substantially delayed this rulemaking.¹¹ Congress, in establishing the appliance program, anticipated this possibility and directed the Department to reevaluate standards (including a no-standard standard) within five years and from time-to-time thereafter. See Section 325(h)(1). Therefore, efficiencies of products that have entered the market after 1980 would be considered as potential standards in that reevaluation.

The final comment relating to maximum technologically feasible efficiency levels urged DOE to consider features currently available from foreign products. Consumers Union and NRDC argued that these products can be imported, obtained under license, and incorporated into domestic appliances by the effective date of standards.

DOE's analysis considered only those technologies available in the domestic market because the Department did not have detailed data for foreign designs

⁶ Indeed, that part of the ORNL Model most criticized in the April 1982 proposal, the market penetration algorithm, was unchanged from the June 1980 proposal. The market penetration algorithm was not criticized by commenters to the June 1980 proposal.

⁷ Depending on the issue, the explanations of these changes or the responses may appear either in the December 1982 final rule or in this rule.

⁸ For example, DOE has had to grant test procedure waivers for certain condensing furnaces.

⁹ Where there are specific problems involved in assessing particular design options now in the marketplace as potential standard levels, these are addressed in the product specific discussion.

¹⁰ For example, these new products were included as additional points in revising and improving the cost-efficiency curves in the ORNL Model, because these inclusions were simple to accomplish and would not delay the rulemaking.

¹¹ Moreover, as indicated in the product-specific discussion, the efficiencies of some of these most recent products are not even appropriate as standard levels.

not incorporated in domestic appliances and, therefore, could not analyze properly the impacts of standards based on foreign designs. Although some commenters criticized DOE for not analyzing the impacts of standards using these technologies, DOE received little information on these designs. An additional problem with assessing foreign products was evident from the comments—disagreement and uncertainty as to the facts concerning the product. For example, NRDC and Whirlpool Corporation disagreed fundamentally over the capabilities of a particular Japanese refrigerator.

c. Energy savings

1. *Determination of Energy Savings.* The determination of the likely energy savings attributable to particular, possible appliance efficiency standards is critical in determining whether a standard would result in a significant conservation of energy or whether a standard is economically justified.¹³ Thus, whether a rule were to prescribe a standard or a no-standard standard, such a determination is a necessary element. Throughout this rulemaking proceeding DOE has utilized the ORNL Model to form the basis for this determination. In general, the ORNL Model projects residential energy use by a product with and without standards over a given period. By comparing the energy used without a standard during the period to the energy used with a particular standard during the same period, DOE is able to project the amount of energy saved during that period which is attributable to the standard. The energy saved is expressed in Quads (quadrillion BTUs). With respect to electricity, the savings are Quads of source or primary energy; that is, the energy that is necessary to generate and transmit electricity. The ORNL Model is fully explained in EcAD, at Appendix E.

This Model was originally developed prior to this rulemaking and the appliance efficiency program, but the Model has been subject to continuous refinement and improvement, much of it as a result of this rulemaking. As a result of the June 1980 proposal, a number of changes were made to the Model in light of the comments, see EcAD, 29-34. Similarly, as a result of the April 1982 proposal, many comments on the Model were received, and a number of changes subsequently made. Several of these comments and resulting

changes were described in the December 1982 final rule, see 47 FR 57201-57202.¹⁴ All changes to the ORNL Model since the April 1982 proposal are described in the Supplement to the Economic Analysis Document and Engineering Analysis Document (hereafter "Supplement"), issued with today's rule.

As indicated in the December 1982 final rule, the issue with respect to the ORNL Model that received the greatest attention was the Model's treatment of the relationship between energy prices and the market's responsiveness in producing and selling more energy efficient products. The Model recognizes that the existing marketplace is not perfect; that is, all manufacturers do not make and all consumers do not purchase the type of equipment that would always be a consumer's most energy efficient choice from a life cycle cost standpoint alone. The Model calculates the difference between the optimal and the projected average life cycle costs of equipment in a base year from actual price and sales information of equipment in that year and projected energy prices. The difference between the optimal and projected life cycle costs is defined as the market distortion.¹⁵ In years after the base year, the Model projects the level of market distortion based on the initial level as modified by the market penetration algorithm (EcAD, at 403). The principal issue raised by commenters objecting to the ORNL

Model is the manner in which the algorithm projects market distortion in future years.

In general terms the algorithm has the effect of diminishing the distortion between the optimal and the average life costs of equipment being purchased as a function of rising energy prices. In other words, as the price of fuel for an appliance rises, the market in that appliance will become more "rational," i.e., the efficiency of equipment being purchased will be closer to the optimal efficiency (from a life cycle cost perspective) than it was when the fuel price was lower. Under the Model's algorithm, however, distortion always remains. While higher fuel prices reduce distortion over time, they can never eliminate it altogether.

As an initial matter, several objectors took exception even to the general concept that the market responds to higher fuel prices with more efficient equipment. For example, the NRDC maintains that "the evidence that higher price induces consumers to choose higher efficiency is nonexistent: all the evidence says that consumers are almost totally unresponsive to price." (NRDC, No. 2121, at 24).¹⁶ While this objection is broader than one merely directed at the algorithm, were this objection valid it would invalidate the algorithm.

To the contrary, however, DOE finds that there is substantial evidence that as fuel prices rise the market responds in the manufacture and sale of more fuel efficient equipment. For example, even the National Academy of Sciences (NAS) study cited to DOE by the NRDC states "there is ample evidence that energy consumers respond to changes in price . . ."¹⁷ See also Beck, Doctors, and Hammond, *Individual Energy Conservation Behaviors* 1-25 (1980). Most objectors conceded that there is a market response, but argued that the market was not perfect or did not respond adequately. See, e.g., New York State Energy Office, 5-18/3, at 7; Environmental Policy Center, 5-19/13, at 3-4; New York State Energy Office, No. 2180, at 3. Moreover, as even many objectors noted, appliances overseas, where energy prices are higher and there are no governmental standards, tend to be more efficient than American

¹³ In the December 1982 final rule, DOE concurred in a comment of the General Accounting Office in its report "Appliance Efficiency Standards: Issues Needing Resolution by DOE" (hereafter "GAO Report") that there was an inconsistency in the ORNL Model's treatment of the base and standards cases. See 47 FR 57202. At the time of that final rule the computer coding had not been completed to eliminate that inconsistency. *Id.* The Model's calculations that form the basis for this rule reflect the changes made to eliminate that inconsistency.

¹⁴ In the April 1982 proposal, DOE referred to the implicit discount rate rather than the market distortion to describe the difference between the "perfect" and the existing market. In the Economic Analysis Document, DOE also used the term implicit discount rate for this purpose, (EcAD at 144-145), but the Economic Analysis Document, in its explanation of how the Model operates, made clear that it was the difference between the optimal and average life cycle cost (the distortion factor), not any implicit discount rate, that actually was used in the Model (EcAD at 403-405). In the December 1982 final rule, DOE clarified that implicit discount rates are neither an input to nor a formula in the ORNL Model. That is, projected energy savings are not affected by changes in the implicit discount rates. Rather the implicit discount rate is an output that is derived by the Model, and in the 1982 proposal was used as a shorthand method for expressing the market distortion that does in fact drive parts of the Model. See 47 FR 57200 n.5. For reasons explained *infra*, DOE now believes it is more accurate to refer directly to the market distortion rather than to implicit discount rates.

¹⁵ Comments on the rulemaking were given docket numbers. Citations to comments provide those docket numbers, unless the comment was submitted as part of an oral presentation, in which case the citation is to the date and numerical order of the presentation, e.g., 5-18/3.

¹⁶ *Behavioral and Social Aspects of Energy Consumption and Production: Preliminary Report*, National Academy Press, at 7 (1982) (hereafter "NAS Study").

¹⁷ Under Section 325(d), DOE is required to weigh various factors to determine whether a standard is economically justified. One of those factors is the projected energy savings attributable to the standard.

appliances. Survey data cited to DOE by commenters also indicated that consumer response to higher fuel prices would be to purchase more efficient equipment. Manufacturers supporting the rule stated their belief, based upon their experience in the field, that the market did respond to higher energy prices in higher efficiency equipment. The fact that there is wide-scale advertising on the basis of efficiency, even at the wholesale level, is evidence that manufacturers and retailers act upon that belief. Some, including trade associations, also found support for this conclusion in the generally increased efficiency of appliances in the past ten years, a period in which energy prices have risen.

The objectors who denied the existence of any evidence of a relation between fuel prices and appliance efficiencies instead suggested that the increase in appliance efficiencies during the period 1972-1981 was caused by factors other than fuel price increases. For example, the NRDC acknowledged that "[t]he data . . . clearly show that appliance efficiencies have increased noticeably over the period 1972-1981" (NRDC, No. 2176, at 6-7), and that increased energy prices are one of the important changes that has occurred (*id.*), but NRDC suggests that State efficiency standards, the threat of Federal standards, and increases in efficiency as a by-product of other design objectives, not increased fuel prices, are the more likely explanation for these increased appliance efficiencies. DOE has considered these suggestions but has concluded that the evidence does not support a determination that these other factors, as opposed to increased fuel prices, are responsible for increased appliance efficiencies.

First, no commenter has suggested that an increase in efficiency in any product subject to today's rule is the by-product of other design objectives.

Second, no commenters presented any evidence that the possible imposition of Federal standards had resulted in increased appliance efficiencies that would not have occurred in the absence of such possible imposition.¹⁷ Moreover, increases in efficiency in the 1972-1981 period have occurred with respect to appliances for which no proposed

Federal standard has ever been published.

With respect to the suggestion that State standards are responsible for increases in appliance efficiencies, the NRDC, for example, attempted to demonstrate that the manner in which appliance efficiencies have increased is more indicative of regulation-induced changes than changes induced by fuel-price effects (NRDC, No. 2121, at 13-15; NRDC, No. 2176, at 10-13). With respect to refrigerators, NRDC submitted curves representing the frequency of distribution by efficiency for two classes of refrigerator-freezer before and after imposition of the California standard. See NRDC, No. 2121, at Appendix A. NRDC interprets these curves as indicating that the increase in average efficiency is due solely to elimination of models that are prohibited by the standard. DOE, however, believes these curves indeed are evidence of a price rather than regulation effect. For example, in the top-freezer, auto-defrost class (by far the most popular class) between 1975 and 1981 the entire curve shifts to the left, and the largest increases in relative frequency are at levels of efficiency *in excess of* that required by the California standard.

With respect to the other class, the efficiency of the most efficient model did not increase in the time period. However, the number of more efficient models increased substantially prior to the imposition of the 1979 California standards, and the trend continued after imposition of the standards, with a greatly increased number of models at efficiency levels in excess of that required by the standards.¹⁸ (Increased efficiency) does not indicate that fuel price factors are not at work or that the increased efficiency is due to regulation.

The NRDC similarly claims that the pattern of efficiency improvements in room air conditioners also suggests that the improvements were induced by regulations rather than price because the changes in efficiency allegedly occur in "quantum leaps" rather than at the same pace as increases in fuel prices. DOE, however, has never asserted that the relationship between fuel prices and equipment efficiencies is perfect. Nor does the ORNL Model assume a perfect relationship. Obviously, the real world marketplace is subject to fits and starts,

such as the development of new technology for increased efficiency or, sometimes more importantly, a low-cost manner of incorporating new technology. Moreover, DOE does not concur that data on room air-conditioners indicate "quantum leaps" of efficiency improvements in individual years, so as to be considered inconsistent with fuel price effects. See, e.g., Association of Home Appliance Manufacturers (AHAM), No. 2105, at 4.

In sum, the evidence and arguments of objectors is insufficient to support the conclusion that fuel prices have no impact on appliance efficiencies.¹⁹ This is not to say that State standards (or even the threat of Federal standards) have had no effect on appliance efficiencies. Rather, the weight of the evidence clearly supports the conclusion that market factors are responsible for increased efficiencies.²⁰

Contrary to the NRDC's allegation, however, whatever contribution may be attributable to State standards (or the threat of Federal standards) need not be somehow deducted from the ORNL Model's base case. See NRDC, No. 2121, at 23-24, 26. First, the NRDC assumes that all State standards will in fact be eliminated. As indicated in the December 1982 final rule, however, DOE has reviewed existing State standards and found that they would most likely be granted an exemption from preemption. Moreover, States that feel that standards have an impact seem likely to seek exemptions. Second, the promulgation of this rule does not eliminate the threat of Federal standards. Under the Act, DOE must reevaluate a standard (including a non-standard standard) within five years. Third, as even NRDC concedes, fuel price rises have indirect as well as direct effects, and the indirect effects include State standards and the threat of Federal standards. (NRDC, No. 2121, at 24). Moreover, "[t]he 'elasticities' recorded in the Oak Ridge model in fact reflect a number of indirect responses to price." (*Id.*) Indeed, the ORNL Model, by not distinguishing between direct and indirect effects, is intended to reflect *all*

¹⁷ While some manufacturers acknowledged that the proposed standards had affected them in the choice of a specific level of increased efficiency, they also indicated their belief that market pressures were demanding more efficient equipment. See, e.g., Climate Control, 5-20/5, at 2-3. Thus, these statements do not establish that absent proposed standards the observed efficiency increases would not have occurred or been as great.

¹⁸ DOE notes, moreover, that both curves have points indicating the "best Japanese model" as exceeding the U.S. models in efficiency. Inasmuch as Japan does not have mandatory minimum efficiency standards for refrigerators, but does have higher electricity prices than the U.S. and an aggressive labeling program, these points on the curves certainly do not support the absence of a fuel price/appliance efficiency relationship.

¹⁹ Extensive responses to certain of the other arguments raised by objectors are not warranted. For example, the NRDC asserted there was no relationship in the market between the price of an appliance and its efficiency. As alleged evidence of this, NRDC enclosed an attachment listing various appliance models, their initial cost, and their fuel cost. DOE has reviewed this information, but the information is insufficient to determine the comparability of features or amenities associated with these models, so it is impossible to determine whether the information supports NRDC's point.

²⁰ Consistent improvements in efficiency for appliances not even subject to any State standards is merely one indication.

effects of rising energy prices on appliance efficiencies. Consequently, DOE does not agree that any effects of State standards or the threat of Federal standards must be quantified and deducted from the observed increased efficiencies before DOE can conclude that increased appliance efficiencies do result from increased fuel prices.

Concluding that the record amply supports a finding that increased efficiencies of appliances result from increased energy prices does not, however, exhaust the inquiry. As indicated above, while many objectors conceded that the market worked to one degree or another, these objectors argued that the market was not perfect, did not result in optimal efficiencies, or did not adequately respond to increased energy prices. See e.g., New York State Energy Office, No. 2180, at 3. Several descriptions were made of aspects of market imperfection.

First, many appliances are purchased by persons other than those who will pay the fuel bills, and therefore they will not have a direct financial incentive to lower the life cycle cost of an appliance where to do so incurs a higher initial purchase cost. Specific examples could be builders of new housing and some landlords. See, e.g., GAO/EMD-82-78, at 13. These types of persons are generally referred to as "third-party purchasers."²¹

²¹ Several commenters who objected to the algorithm suggested that builders and landlords would always purchase the least expensive and hence least efficient appliances. The record does not support such a conclusion. For example, DOE received comments from some landlords that because they paid the fuel bills, the landlords would pay an increased price for the more efficient equipment. See, e.g., the Robert A. McNeill Corp., No. 2183. Moreover, it is not uncommon for landlords to pay fuel bills. GAMA submitted data demonstrating that landlords paid gas costs in 37 percent of the cases, oil, coal and wood costs in 70 percent of the cases, and electricity costs in 21 percent of the cases. See Gas Appliance Manufacturers Association (GAMA), No. 2177, at 2. With respect to builders, information submitted in the rulemaking indicates that many builders are incorporating high efficiency HVAC equipment in the homes they build. See Professional Builders, October 1981 (survey showing 78 percent of builders are installing high efficiency equipment). Perhaps even more importantly, survey data submitted by Carrier indicated that builders were increasing the efficiency of the equipment they were installing. Carrier Corp., No. 2120, at 9-10 (72 percent of builders said that they plan to build homes in 1982 with more efficient equipment than those built in 1981, and over 25 percent said that all their 1982 homes would have more efficient equipment than the 1981 homes). Because of some controversy over revisions to the text of a National Association of Home Builders Research Foundation Survey, DOE has not relied on the text accompanying that survey. Nevertheless, the data, while indicating less than total commitment to energy efficiency by builders, also demonstrated that many builders and subcontractors are concerned about the energy consumption of the equipment they install. Finally,

Second, the ability of consumers to make life cycle cost determinations depends on their knowledge and the availability of adequate information. Until the advent of the appliance labeling program, it would have been exceptionally difficult for consumers to determine the relative life cycle costs of competing appliances. Even now there was substantial evidence in the record that the labeling program for furnaces has serious problems. Moreover, until fairly recently the energy efficiency of appliance was not widely advertised, so consumers has little ability in many cases to distinguish higher efficiency from lower efficiency appliance.²²

Third, replacement of many appliances may occur when the existing unit fails, and the consumer may be primarily concerned about quick replacement rather than life cycle cost.

Fourth, as noted by the NAS study provided by the NRDC, consumer decisionmaking involves "a range of variables that may be considered 'internal' to the consumer including attitudes, beliefs, uncertainty about personal futures, mode of information processing, interpersonal influences, and personal norms." (NAS Study, at 6).²³ These variables would affect the extent to which the "market" operates to minimize life cycle costs.²⁴

DOE recognizes that, for all its efficiencies, the marketplace does not achieve absolute perfection in minimizing life cycle costs. In the April 1982 proposal DOE acknowledged the existence of market failures in the appliance industry and identified several of the possible causes that were also mentioned by objectors. See 47 FR 14428 (April 2, 1982). The comments by objectors, however, seem to reflect the erroneous belief that the ORNL Model

the number of advertisements for housing which includes claims as to the energy efficiency of the house indicates builder concern with efficiency, if only because of perception of purchasers' concern.

²² The availability and credibility of information regarding the efficiency of appliances and the impact of such efficiencies on fuel costs are obviously very important to improving the rationality of the appliance marketplace. See generally NAS Study. No one mechanism, such as government required labeling, is determinative, but apparently multiple, reinforcing sources of information, over time, can have a synergistic effect.

²³ The NRDC cited the NAS Study as support of NRDC's criticism of the algorithm and as support for NRDC's criticism of the use of any econometric model for projecting energy savings. See NRDC, No. 2121, at 17.

²⁴ It should be noted that these variables can have the effect of having consumers value energy efficiency or conservation more highly than would be indicated by a life cycle cost analysis. That is, there can be market "imperfections" that tend to overvalue energy efficiency. The NAS Study, for example, describes the growing trend toward "voluntary simplicity." See NAS Study, at 27-29.

and the market penetration algorithm ignore these possible market failures. For example, several commenters seem to suggest that the Model ignores the effect of third-party purchasers. See, e.g., Consumers Union, No. 2085; GAO Report, at 12-13. This, however is not so. As indicated above, the Model derives the initial distortion factor (the difference between the actual and optimum average life cycle cost in the base year) on the basis of actual cost and shipments data. This distortion factor necessarily gives effect to all market imperfections in the base year, although without quantifying the separate impact of each. Moreover, the way the algorithm is structured, the distortion factor is never eliminated; it can only be reduced. Thus, nothing in the Model or the algorithm denies the existence or continuation or market imperfections. Rather, the algorithm merely represents a judgment that market imperfections will diminish as fuel prices rise.

Several commenters who objected to the ORNL Model contested that as fuel prices rise market distortion diminishes. As DOE noted in the April 1982 proposal, few studies have been made of changes over time of market distortion (or of implicit discount rates) or the relationship between market distortion and changes in fuel price. The only study cited to DOE, a study DOE itself identified in the April 1982 proposal, while certainly not conclusive, does suggest that higher fuel prices may lead to less market distortion. See EcAD, at 145.²⁵

²⁵ The study indicated that, while investment in thermal integrity in electrically heated homes showed little change in implicit discount rates over the period 1973-1979, the implicit discount rates for those investments in gas-heated homes declined 15 to 20 percent. Inasmuch as the real price of gas increased almost five times as rapidly during the period as that of electricity, and the initial implicit discount rates for electricity were only a fraction of the initial implicit discount rates for gas, such a differential in changes in implicit discount rates between gas and electricity is explainable. While DOE tentatively characterized this reduction in implicit discount rates as relatively small in the April 1982 proposal, upon further analysis DOE believes such a characterization is inapt. First, Thermal integrity improvements are almost entirely made by "third party" builders of new housing, and therefore market imperfections in this type of investment would tend to be greater than for products directly purchased by the ultimate consumer. Second, there is no labeling program for such improvements. Third, such reductions in discount rates are not inconsistent with those projected for some appliances by the ORNL Model over the same period of time. More importantly, upon reconsideration of the tentative conclusion to be derived from this study, expressed in the last sentence of pages 145 of the EcAD, DOE has determined that the results of the study support the concept of the reduction of market distortion as a result of rising energy prices. Moreover, even the

While this study was the only empirical study of the effects of increased fuel prices on market distortion, there is a theoretical basis for the conclusion that increased fuel prices will result in reduced market distortion. That is, if one considers the nature of several of the causes of market imperfection, it appears logical that increased fuel prices will reduce at least to some degree these imperfections. The NAS Study, for example, in discussing the lack of consumer information and awareness as an impediment to efficient working of the marketplace, states: "This sort of energy unawareness can be reversed if price increases or other stimuli are strong enough to make energy salient." (NAS Study, at 30). And, "[e]nergy price increases will make us more aware of energy flows . . ." (*Id.*, at 32). See also *Individual Energy Conservation Behaviors*, *op. cit.*, at 180-191. Moreover, just as energy price increases can result in better information and awareness of the energy costs of appliances, so also can such awareness become concern, such that third party purchasers would have to consider the salability or rentability of their housing units if they are not energy efficient. The existence of this theoretical and empirical evidence of a reduction in market distortion, however, is not evidence of the elimination of market distortion, nor is it necessarily evidence for a particular rate of decline of market distortion.²⁶

The market penetration algorithm is a formula for a particular rate of decline of market distortion as a function of increased fuel prices. In light of a number of comments that there was no empirical support for the particular algorithm, DOE undertook to try to test the algorithm by applying it to products in past periods and seeing if it accurately projected the present. As indicated earlier, however, the way the algorithm works is to take a base year's actual and optimum average life cycle costs for an appliance from actual data on equipment prices, efficiencies, and shipments. Unfortunately DOE does not

authors of the study used it to support further work to improve market forces and reduce market imperfections, not to support mandatory efficiency standards.

²⁶ Some commenters focussed on Table 2-2 in the EcAd to argue that, despite rising fuel prices, four of the six products subject to today's rule showed decline in efficiency between 1978 and 1980 and consequently no decrease in market distortion. As indicated in the EcAd's Table 2-2, however, the 1980 values were estimates based on the engineering analysis. In the Supplement, Table 2-2 has been updated with the most recent data, and estimates have been eliminated. Thus, it shows actual measured increases in efficiency. No product declined in efficiency between the years for which data was available.

have sufficient data for any year prior to 1978 to enable it to test the algorithm with precision. That is, DOE had to estimate some of the data inputs for earlier years, and it is not clear to what extent these estimations could affect the validity of the test. In addition, the scientists who developed the test designed it to measure changes in implicit discount rates, rather than changes in market distortion.²⁷ In the course of making initial test runs, however, DOE discovered that under certain circumstances relatively minor changes in market distortion could result in drastic changes to the implicit discount rate. The clear implication of this was that implicit discount rates were not a good shorthand for market distortion, and that the test of the algorithm, if run in this manner, would be virtually useless because major deviations in the projected implicit discount rates from "actual" rates would not establish that the algorithm was inaccurate.²⁸ Finally, in the course of the initial test runs and a general review of the ORNL Model,²⁹ it was determined that a problem existed in the ORNL Model's life cycle cost-efficiency curve, which has the effect of tending to exaggerate the market distortion in future years. That is, separate from the disputed formula that reduces market distortion as a function of rising energy prices, the algorithm has a bias toward a larger than appropriate market distortion.³⁰

In light of these developments, the statutory requirement for a final rule by January 1981, and the lawsuit described above to compel issuance of standards by January 29, 1983, DOE determined that further adjustments of the ORNL

²⁷ As indicated above, DOE had used implicit discount rates as a shorthand for measurements of market distortion, even though implicit discount rates were not used in the algorithm or Model.

²⁸ In addition to this problem with the use of implicit discount rates as a shorthand for market distortion, the use of the term apparently confused people. Despite the clear statement in the EcAd that the term was not used to refer to the decision criteria of individual consumers, but to characterize the behavior of the entire market (EcAd, at 144), persons misunderstood the distinction and consequently made some comments that were non-responsive. See, e.g., NRDC, No. 2121, at 10-11.

²⁹ In light of the many negative comments on the ORNL Model in the rulemaking proceeding DOE assembled a task force of three persons who had never been associated or involved with the appliance rulemaking but who were at least aware of the ORNL Model. The purpose was to have the Model evaluated by technical experts who were disinterested in the rule and the Model. None of the persons was employed under the Assistant Secretary for Conservation and Renewable Energy, and only one was an employee of DOE.

³⁰ The experts who discovered this problem estimated that perhaps eighteen months of analysis might be required to quantify the effects of this problem.

Model for the purposes of this rulemaking would not be appropriate. That is, the time that would be required for the analyses, the doubtful usefulness of the conclusions that would be reached, and the limited effect of the market penetration algorithm itself³¹ all counselled against delaying final rules in this proceeding pending conclusion of further analyses of the algorithm or the Model.

Accordingly, it remains true that there is no specific empirical or theoretical study to support the particular rate of decline of market distortion as a function of energy prices reflected in the algorithm. On the other hand, there is no such study disproving the algorithm.³²

Some, including the GAO Report, made the claim that a small increase in the efficiency of some appliances since 1972 despite large energy price increases is inconsistent with the algorithm. These claims, however, misconstrue the effect of the algorithm. That is, large energy price increases do not necessarily mean large increases in efficiency of appliances in the Model. The relative speed of improvement in efficiency for a product would depend on its initial market distortion. Indeed, in the EcAd, it was apparent that the Model projected efficiency improvements occurring at greatly different rates among appliances. See, e.g., Table 3-12, EcAd. Thus, it is simply incorrect to expect that a given increase in energy prices results in a similar increase in appliance efficiencies.

Several commenters argued that the algorithm was inaccurate because linearly projecting historical efficiency improvements into the future provided different results from the algorithm. Such an argument, however, assumes that simply projecting past efficiency improvements into the future is a valid methodology. There is, however, no evidence in the record to support such a

³¹ In the product-specific discussion the limited effect of substituting either the rate of historical improvements or a constant market distortion is described.

³² As indicated in the April 1982 proposal, the one study acknowledged by DOE and cited by commenters involved thermal integrity improvements which involve circumstances sufficiently dissimilar from the appliance context to render that study's specific figures inconclusive in the appliance context. See also *supra*.

NRDC noted a paper by David Meyer that criticized the Energy Productivity Center's estimates of future electricity demand as being "heavily dependent on over-optimistic assumptions about the future pace of investment in energy efficiency." The ORNL Model's assumptions, however, are much less optimistic than those criticized and indeed produce what Meyer termed "a more realistic portrayal." NRDC, No. 2121, at 20.

conclusion.³³ Rather, there is ample evidence to the contrary. For example, as even NRDC notes, over the period 1948-1975 refrigerator efficiencies declined.³⁴ NRDC, No. 2121, at 17, but thereafter they improved significantly. Moreover, as the NAS Study stated succinctly, "If there is one certainty about the U.S. energy system over the past 10 years, it is that the recent past has not been a valid guide to the immediate future." NAS Study, at 32.

In light of all of the above, DOE has determined to retain the market penetration algorithm without changes. This does not reflect an arbitrary conviction by DOE that even absent validation the algorithm must be accurate. To the contrary, DOE is continuing analyses and research into the algorithm and the ORNL Model generally to validate or improve them wherever possible.³⁵ Rather, retention of the algorithm is based upon DOE's conclusion that, given the current state-of-the-art, the algorithm is the best measurement available of the particular relationship between rising energy prices and increased appliance efficiencies. Other methodologies suggested by commenters, such as the rate of past historical improvements or freezing the current market distortion, not only are not superior to the algorithm, but also on the basis of the record are clearly worse.³⁶

³³ NRDC states that "[o]ne assumption consistent with the data is that appliance efficiencies will generally continue to increase at the same rate that they have increased historically, absent standards." NRDC, No. 2121, at 16. At best, this is a tautology—if one assumes that the future will reproduce the past, then data as to the past is consistent with the assumption. At the worst, it is simply incorrect. See *infra*.

³⁴ Over this period, it should be noted, real electricity prices declined. The algorithm would accordingly project lower efficiencies.

³⁵ Subsequent to the public comment period and to DOE's analysis of the ORNL Model and the algorithm described above, as an outgrowth DOE's continuing efforts to improve the ORNL Model as both a research and regulatory tool, a preliminary report of an attempt to test the algorithm was submitted to DOE by contract personnel. That preliminary report has not been documented, so DOE does not believe that decisions should be based upon it. Nevertheless, its preliminary, undocumented results indicate that with respect to three of five appliances using electricity, the algorithm's projection from a 1972 base year of the 1980 market distortion (as measured in dollars difference between the optimal and average life cycle costs) was within \$10 of the "actual" 1980 market distortion. Although the preliminary report only used electricity prices, it appears to indicate, however, that market distortion increased for furnaces and water heaters during the period 1972 to 1980, which would be inconsistent with the algorithm's projections.

³⁶ By using these two other methodologies as sensitivity analyses in the product specific discussion, DOE does not intend to suggest that there is any basis for using such methodologies in place of the algorithm.

The ORNL Model with the algorithm has been studied by independent organizations separate from the rulemaking and found to be a useful and appropriate model for analyzing energy policy choices in general and appliance efficiency standards in particular. For example, in April 1981, a draft report for the Electric Power Research Institute by the Energy Laboratory of the Massachusetts Institute of Technology concluded, "[t]he end use detail of the model and its ability to capture the dynamics of appliance acquisition make it particularly suitable for analyzing the impacts of policies which affect specific appliances. . . . The ORNL model is well-suited for forecasting the impacts of mandatory standards." *An Evaluation of the ORNL Residential Energy Use Model*, MIT (April 1981), at 95, 101. A report by the Energy and Resources Group of the University of California at Berkeley compared the ORNL Model with the California Energy Commission (CEC) model. That report concluded that the ORNL Model was not appropriate for energy use forecasts at the level of a utility company's service area, but that it was appropriate to use the ORNL Model "to estimate the comparative impact of new policy initiatives on the national level." *An Assessment of Residential Energy Consumption Data and Their Use in Forecasting Models, Volume I: Overview*, Energy and Resources Group, Berkeley, California (September 1981), at ii-iv, 43-45. Indeed, that report concluded that the ORNL Model represented "the state-of-the-art in demand forecasting of a mechanistic nature." *Id.*, at 18. And the report also found that the CEC Model should not be used to estimate energy savings resulting from imposition of appliance standards. *Id.*, at iii-iv. The Energy Modeling Forum in 1979 compared the electric load forecasting of ten different models. The ORNL Model was singled out as the only model that separated the effects that would occur normally in response to higher prices, which the report stated was necessary for an accurate estimation of the effects of standards. *Electric Load Forecasting: Probing the Issues with Models, Vol. I*, Energy Modeling Forum (April 1979), at 28-29. These reports all dealt with earlier versions of the ORNL Model, and some of the reports naturally contained recommended improvements to the Model, many of which have been made. The importance of these reports, however, is that notwithstanding the limitations of the Model it was determined by independent scientists to be an appropriate, and when compared

to other models the most appropriate, model for assessing the impacts of appliance efficiency standards.

It is appropriate to note again that the algorithm was developed before and without regard to the appliance efficiency program, by scientists attempting in good faith to model in the most accurate fashion changes in residential energy use. The very questions emphasized by commenters critical of the April 1982 proposal were in fact first raised by DOE as a result of its own research and identified as questions in the April 1982 proposal. The existence of unresolved questions, however, is not a ground for replacing the algorithm, especially when the only presently known possible replacements have established deficiencies.³⁷ As indicated earlier, DOE has made changes to the ORNL Model's methodology and inputs where the record supports changes. With respect to changes to the algorithm, however, DOE concludes that such record support does not exist.

As the above discussion suggests, DOE's review of the ORNL Model generally, including the algorithm, is a continuing affair, and is not dependent on the existence of a particular rulemaking. Consequently, DOE is now considering and continues to search for possible improvements to the Model. If, in the course of such on-going studies, it is found that improvements to the ORNL Model or of any of the other models or analyses are of a magnitude that might affect the determinations made in today's rule, DOE intends to begin a new proceeding at that time without waiting for the beginning of the statutorily required five year review.

2. Significance of Savings. As indicated above, the Act prohibits DOE from adopting an energy efficiency standard for a product unless the standard would result in a significant conservation of energy. In the April 1982 proposal, DOE noted that the Act did not define the term "significant." Thus, DOE indicated its view that Congress used such a term with the intent that DOE would, in the exercise of its informed judgment, determine what

³⁷ Not all of the questions, moreover, would have the effect of diminishing the effects of the algorithm. In the April 1982 proposal, for instance, DOE indicated its belief that the algorithm might well understate the speed at which efficiency improvements might be made. 47 FR 14428. Moreover, the rulemaking record provided some support for this belief. Nonetheless, DOE has concluded, in agreement with objectors, that it would be inappropriate to alter the algorithm in this respect in the absence of data or validation to support such a change.

level of savings would be significant and under what circumstances.

Accordingly, in that proposal DOE proposed three different tests for significance, any one of which, if met by a potential standard, would justify a finding by DOE that a significant conservation of energy was attributable to the standard. In the December 1982 final rule, DOE treated at some length the various comments on the three proposed tests and concluded that with certain changes the three tests were appropriate. See 47 FR 57202-57209. As indicated in the preamble to that rule, the three tests to be utilized are:

(1) If the standard would result in the saving of 10,000 bpd of oil or the saving of 56,530 mcf per day of natural gas³⁸ over the period of the average life of the product in question beginning with the year 1987;

(2) If the standard would result in the saving of one percent of national electricity use over the period of the average life of the product in question beginning with the year 1987;

(3) If the savings attributable to a standard for a product were equal to 16.67 percent of the energy that would be used by that product in the absence of a standard, measured over the one year period following the period of the average life of the product purchased in 1980.

In the December 1982 final rule, DOE indicated that it had not yet concluded its consideration on the issue of electricity peak load demand savings. A number of commenters on the April 1982 proposal had criticized DOE's electricity savings significance test because it allegedly ignored the effects of standards on peak load savings. Because the December 1982 final rule did not deal with air conditioning equipment, the products most cited to DOE by commenters as those for which peak load analysis was most important, and in light of the importance of peak load savings, DOE deferred a decision on this issue and stated that it was continuing to study the issue toward the end of perhaps adopting an additional test of significance in this rule. See 47 FR 57207-57208.

A number of methodologies can be used to determine peak load savings attributable to a standard in a particular utility service area. See, e.g., New York City Energy Office, No. 2141, at Appendix C; ACEEE, No. 2173, at 3-4.³⁹

³⁸ 56,530 mcf of natural gas contain the same BTUs as 10,000 barrels of oil.

³⁹ DOE is in the process of developing a computer model that can be integrated with the ORNL Model that simulates disaggregated hourly residential electricity demand for electric utility service areas.

Each of these methodologies requires data specific to the utility service area as to peak and average loads (which is generally available) and as to the contribution of the particular product in question to those peak and average loads (which is generally not available, although it is available for some utilities). The primary difficulty, however, is in making determinations on a national basis. First, it is simply not possible, for data and resource reasons, to determine the effect of a standard for a product on the peak load for each of the utilities in the United States and then simply add them. Second, it would be inaccurate in this instance simply to generalize to all utilities the impacts of a standard on the peak loads of a small number of particular utilities.⁴⁰ Third, it is methodologically inaccurate to derive national peak load savings by backing out of aggregated national data regarding peak loads the demand reduction attributable to a standard for a product.⁴¹ The present inability to determine even order-of-magnitude national peak load savings attributable to a standard for any product, especially air conditioning equipment, makes impossible a specific test of the significance of energy savings based on peak load savings.

d. Economic Justification

As indicated above, Section 325(b) of the Act prohibits a standard for a product if DOE by rule determines that the standard is not economically justified. Thus, even if a standard would

⁴⁰ As indicated in the December 1982 final rule, the nature of a utility's peak load is highly regional, if not local. The New York City Energy Office, for example, stated that its demand curve was unusual. No. 2141, at 6. Moreover, whereas 19 percent of the peak demand was attributable to room air conditioners, less than 2 percent was attributable to central air conditioners. *Id.* at Appendix C.

⁴¹ This was essentially the methodology used by ACEEE to estimate national impacts. The primary problem with this methodology is that it assumes that all reduction in demand is a reduction of peak demand. There simply is no such coincidence. For example, the overall savings in demand attributable to a standard would not reduce the utility's peak demand by that amount because not all units of the product would be used at the peak load period. In New York City, for example, the percentage of coincident usage of air conditioning equipment at summer peak is only 47 percent. New York City Energy Office, No. 2141, at Appendix C. Other electrical products are generally considered even less coincident with the peak load. See ACEEE, No. 2173, at 4. Even more important with respect to air conditioning equipment is the fact that any demand reduction would have no impact on the peak demand of the large number of utilities that are winter peaking. Moreover, many utilities which are summer peaking have summer peaks only slightly in excess of their winter peaks, with the result that air conditioner demand reduction might turn them into winter peaking utilities rather than reducing their overall peak by the amount of the summer peak reduction.

result in a "significant" conservation of energy, the standard would be prohibited if it were not economically justified. Section 325(d) of the Act addresses how DOE is to determine economic justification.⁴² It states that a standard is economically justified only if the benefits of the standard outweigh its burdens. In weighing the benefits and burdens, DOE is required to consider six specified factors, as well as any other factors DOE considers relevant. In the April 1982 proposal, DOE indicated that, in light of the Regulatory Flexibility Act, it would consider as an additional, relevant factor the impact of a standard on small businesses. See 47 FR 14434-5. DOE asked for comments on what other, additional factors DOE should consider. DOE did not receive any suggestions for additional factors. Each factor is separately discussed below.

Certain of these factors can be quantified, albeit through projections and computer models; others are not quantifiable. Congress recognized this and indicated that greater weight should not be given to a factor because it was quantifiable. See H.R. Rep. No. 95-1751, 95th Cong., 2d. Sess. 116 (1978).

1. *Economic Impact on Manufacturers and Consumers* (Section 325(d)(1)). A. *Manufacturers*. In the April 1982 proposal, in order to quantify a number of impacts on manufacturers, DOE used a computer model, the Financial Impacts Model (FIM), to simulate the effects of standards on different-sized firms in the appliance industry. The FIM is fully explained in the EcAD. See especially Appendix A. In general, the FIM compared the projected financial records of prototypical firms over a twelve year period—1980 through 1991—under a base case and two standards cases (levels 2 and 3). The FIM then provides four outputs: the increased risk to a firm of not making a profit in the manufacture and sale of a given product subject to a given standard compared to the base case, and the relative profitability, debt/equity and "quick" ratios⁴³ of firms in the base case and with standards. See EcAD, at § 4.5. These impacts, as relevant, are

⁴² The NRDC suggested that because Section 325(d) by its terms only refers to Section 325(c), not Section 325(b), DOE should not determine economic justification under Section 325(d). As indicated in the December 1982 final rule, DOE believes the test of economic justification in Section 325(d) is appropriate for the determinations required by Section 325(b). See 47 FR 57209 n.20.

⁴³ The quick ratio is a measure of a firm's ability to withstand short-term downturns in business activity. Also called the acid test ratio, it is defined as current assets, less inventory, divided by current liabilities.

described in the product-specific discussion.

DOE also conducted for the April 1982 proposal a sensitivity analysis of the risk analysis in the FIM to determine how changing certain variables would affect the output. As indicated in the April 1982 proposal, changing the level of products shipped had a substantial impact on the model's output of increased risk. Where appropriate, these impacts are shown in the product-specific discussion.

Manufacturers and their trade associations were generally of the view that the FIM understated the negative impacts of standards on firms. Most of these comments, however, did not make suggestions as to how to improve the FIM. Perhaps most importantly, the commenters supported DOE's tentative conclusion in the April 1982 proposal that the FIM understated the negative impacts on small businesses, *see* 47 FR 14435. This is discussed in more detail, *infra*.

A few commenters suggested that the FIM's methodology resulted in an overstatement of the negative impacts of standards on firms. These commenters noted that the FIM analysis assumed that the entire investment necessary to raise 1978 efficiencies to standards levels was attributable to the standards, whereas the ORNL Model projected that absent standards efficiencies would increase substantially from 1978 to 1987, suggesting that at least some investments to raise efficiencies were not attributable to standards. *See, e.g.,* GAO Report, at 14: ACEEE, 5-19/4, at 10.

This limitation of the FIM, however, had been fully recognized by DOE in the April 1982 proposal. *See* 47 FR 14431 n.18. Consequently, in order to determine only the impacts on firms attributable to standards, DOE reduced the FIM's projected impacts by a percentage equal to the ORNL model's projected increase in the efficiency of a product between 1978 and 1987. *See* 47 FR 14437 n.31, 14439 n.38, 14443 n.49, 14446 n.59, 14451 n.71, 14454 n.76. No commenter criticized this methodology for adjusting the impacts projected by the FIM.

For the rule today, DOE updated the inputs to the FIM. *See* Supplement. In addition, DOE altered slightly the methodology for adjusting the impacts of the FIM. That is, as indicated in the April 1982 proposal, to reduce the FIM impacts by a percentage equal to the percentage increase in efficiency of a product between 1978 and 1987 presumes that investment occurs at the same rate as increases in efficiency. In fact, however, initial increases in

efficiency cost less than later increases in efficiency. That is, the most cost-effective investments in increased efficiency are made first. Therefore, DOE has altered its methodology to account for this situation. The EnAD provides a basis for constructing cost-efficiency curves that correlate increases in efficiency to levels of investment. DOE has, accordingly, determined the percentage of investment that would be made between 1978 and 1987 in the base case and decreased the impacts of the FIM by that percentage. Because the limitation of the FIM relates to its failure to incorporate investments in more efficient products made in the base case between 1978 and 1987, to reduce the impacts of the FIM by the percentage of investments projected for that period will better take account of that limitation.

A few commenters suggested that the negative impacts projected by the FIM were insignificant. A number of manufacturers, however, not only felt that the negative impacts were understated but that they were significant, especially for small businesses. The specific impacts projected by the FIM for each product are indicated in the product-specific discussion, including DOE's conclusion whether the impact is meaningful. As a general matter, however, there can be little doubt that a negative impact on manufacturers attributable to a standard is, no matter how small, a burden to be weighed in assessing the economic justification of a possible standard. The smaller the negative impact, of course, the smaller is the weight to be attributed to it.

Finally, with respect to the FIM, some commenters questioned how it was that DOE projected very small energy savings attributable to standards but substantial negative impacts on manufacturers. These commenters suggested such conclusions were contradictory. *See, e.g.,* Minnesota Department of Energy, No. 2133, at 3. There is no such contradiction, because a small energy savings attributable to standards does not necessarily mean that the investment and other manufacturing resources to obtain that savings are small. Moreover, the FIM's prototypical firms were based on the financial and operating characteristics of firms making the particular appliance, and some sectors of the industry may be highly susceptible to negative impacts because of their particular market peculiarities. No data or analysis was provided by these commenters to suggest a different way of measuring the impacts.

In the April 1982 proposal, DOE noted that in addition to the quantified impacts on manufacturers measured by the FIM there were certain unquantified impacts. DOE specifically mentioned that to the extent that expenditures by manufacturers on energy efficiency improvements to appliances are dictated by standards rather than economics, more appropriate investments may be forgone. DOE indicated that the foregone investments could include investments in increased productivity, increased energy efficiency in the manufacturing sector, or new utility or performance features. *See* 47 FR 14431-32. Manufacturers generally supported this conclusion. Commenters who objected to the conclusion generally did not offer arguments to the contrary, but rather suggested that DOE had no data to support such a conclusion.

DOE does not believe that data is necessary to support a conclusion that is otherwise supported by generally accepted economic theory. Moreover, Congress has indicated that merely because a factor cannot be quantified should not affect its consideration in the weighing of burdens and benefits of a possible standard. However, as was also indicated in the April 1982 proposal, *see* 47 FR 14432, 14435, this particular type of burden is essentially inherent in any appliance efficiency standard and might be characterized as a generic burden of a government standard. As such, in the absence of evidence of a particularized negative impact, this burden alone clearly cannot be enough to outweigh all the potential benefits of a standard, because it would make the remaining economic justification factors superfluous. Thus, while DOE does consider this unquantified burden in weighing the burdens and benefits of standards, DOE does not assign it great weight in the absence of evidence of particularized negative impact with respect to a given product.

In addition to this unquantified burden on manufacturers, several commenters suggested others. Of primary concern was the effect of standards on U.S. exports of appliances. Manufacturers and trade groups generally expressed the view that the current U.S. 20 percent share of the world appliance market would be reduced because, as a result of standards, the U.S. products would be more expensive. DOE has considered this comment but does not believe there is sufficient evidence to conclude that, overall, standards would have a negative effect on U.S. exports of appliances. First, the Act expressly

exempts exports from any efficiency standard. Section 330. Second, while it might raise export unit costs to create new, separate domestic and exports lines, there is insufficient evidence why new separate lines would have to be created. That is, production lines currently producing any noncomplying models could become the export lines. Third, it has not been established that more expensive but more efficient U.S. appliances would not compete as well abroad as less expensive and less efficient U.S. appliances.

Commenters who opposed the April 1982 proposal raised some non-quantifiable impacts on manufacturers that they suggested either mitigated the burden of standards on manufacturers or might make a standard more beneficial for manufacturers than a no-standard determination. One of these impacts was the mandatory elimination of various product lines (because they would not meet the standard's requirement) which supposedly would reduce costs to manufacturers. See, e.g., Carrier Corp., 5-18/7, at 7.

While it might be true for large manufacturers that compete across the entire product spectrum that there would be cost savings in reducing the number of product lines, especially if they already had sufficient product lines meeting standards levels, DOE notes that whether elimination of product lines is a benefit or a burden to a manufacturer would depend largely on its specific product line mix and position in that product market. Consequently, DOE does not believe it would be appropriate to consider these alleged cost savings as a general, if unquantifiable, benefit to manufacturers attributable to standards.

Another comment suggesting an unquantified benefit for manufacturers resulting from standards was that, if standards were imposed, U.S. manufacturers would be less vulnerable to competition from imported appliances, especially from Japan. See, e.g., Carrier Corp., 5-18/7, at 7. DOE believes there is no basis for concluding that standards would insulate domestic manufacturers from foreign competition. Indeed, a substantial case could be made that efficiency standards for appliances would benefit foreign competitors at the expense of domestic manufacturers. These commenters first maintain that the marketplace will not result in more efficient products being built, because "getting people to buy higher efficiency equipment is [a problem]." *Id.*, at 6. These commenters, however, do not explain why more efficient foreign equipment would then

be successful in the U.S. market, where U.S. equipment supposedly is not. Efficient foreign equipment will only find a market in the U.S. if there is a demand for more efficient equipment. If that demand is artificially created by government regulation before the marketplace would create the demand, foreign competitors would gain an advantage, because they have already developed the more efficient lines. No new investments, for them would be necessary; no change-over costs would be incurred. Consequently, DOE concludes that the negative impacts on manufacturers from foreign competition are not lessened by standards, but, if anything, are increased.

B. Consumers. One measure of the economic impact on consumers attributable to standards is through a life cycle cost analysis. Under Section 325 of the Act, however, the life cycle cost impact of standards is a separate factor to be considered. See Section 325(d)(2). Accordingly, the life cycle cost impacts are discussed *infra*.

Nevertheless, increased first costs can also impact consumers. That is, as suggested in the April 1982 proposal, as a result of increased first costs, certain consumers may retain products longer than they otherwise would, even beyond their normal life. Other consumers might purchase second-hand, rather than new appliances, again generally resulting in an aging of the existing stock of appliances beyond that which would exist absent standards.

Some manufacturers and trade associations submitted data indicating reduced sales of certain appliances in States after the imposition of State standards. This data, they said, supported the conclusion that imposition of standards, with resulting first-cost increases, would result in reduced sales. California, in particular, however, submitted data in response to comments, suggesting that the indicated decrease in sales was unrelated to the imposition of standards. DOE has reviewed all these comments and concludes that there is no substantial evidence that the imposition of State standards has resulted in any significant reduction in sales of products subject to the standards. Similarly, DOE does not believe there is substantial evidence that imposition of any of the potential national standards analyzed would result in any significant reduction in sales of products subject to such standards.⁴⁴ That is, while increased

first costs attributable to standards might still result in certain consumers not purchasing products, whereas without standards they might have, the number so affected is not large enough to impact significantly overall sales figures.

In the April 1982 proposal, DOE indicated that the group most likely to be affected the greatest by increased first costs would be lower income persons. Commenters on the proposal did not generally argue with this conclusion.⁴⁵

The EcAD, at 595, indicated for certain products the projected number of purchases forgone as a result of increased first costs attributable to standards set at the June 1980 proposed level. In the Supplement, DOE has improved and updated the analysis of appliance purchases forgone as a result of increased first costs attributable to standards. Both analyses confirm the disparate first-cost impact on lower income persons. As a result, some lower income persons may in effect be forced to retain products past their normal life or purchase older, used appliances. These older products are generally less efficient than newer models to begin with, and for some appliances initial efficiencies are likely to deteriorate over time, especially if they are retained beyond their normal life or are not properly maintained.⁴⁶ Thus, some lower income persons might, because of standards, be forced to live with less efficient products and thus use more energy. Or the person might simply be forced to do without that type of product. However, if no standards were imposed, it would be possible for a lower income person to purchase a new product with a higher efficiency than the model it was replacing, albeit at an efficiency less than might be available under standards.⁴⁷

groups. While this analysis and its update indicate that lower income persons are most negatively impacted by increased first costs, they also indicate that the absolute number of appliance purchases forgone are not significant as a percent of total sales. See Supplement.

⁴⁴ As indicated *infra*, however, a number of commenters disagreed with DOE's ultimate conclusion that lower income persons would be harmed by the imposition of standards.

⁴⁵ Comments were received with respect to decreased efficiencies over time for room air conditioners, and refrigerators.

⁴⁶ Both analyses indicate that the total number of lower income persons affected in this way is too small to impact national energy use. Thus, the burden of this impact of a standard is not its effect on national energy use, but the imposition of a burden on the lower income persons effectively precluded from purchasing a desired appliance. See *infra*.

⁴⁴ DOE updated an analysis contained in Appendix J of the EcAD. See EcAD, at 595. This analysis projects the number of appliance purchases forgone as a result of standards by various income

In the April 1982 proposal, DOE indicated that it believed that effectively precluding some persons, especially lower income persons, from purchasing a new appliance would be a significant burden to be attributed to standards, even if the number of persons affected was small. The burden is significant because some persons are effectively precluded from obtaining the appliance at all and others are forced to retain or obtain an older appliance that may result in their having increased energy use and costs. Moreover, some consumers may not be able to purchase the appliances they desire, either because of the government standard or because of the increased cost of the appliance attributable to standards. Thus, this burden has both an economic and an unquantifiable social cost involving the effective loss of some economic freedom.⁴⁸

Several consumer-oriented interest groups argued, however, that many lower income persons are renters, whose landlords would purchase the least expensive and least efficient products. See, e.g., Consumers Union, No. 2085, at 8. Such lower income persons, it was suggested, would benefit from standards because standards would force landlords, over time, to upgrade the efficiency of their appliances to the benefit of the lower income renters that would pay the fuel bills. However, little data was submitted on the issue. Although, it would appear that landlords whose rental units remain affordable to lower income persons are not likely to be in a position to invest in the improved energy efficiency of their units, no evidence has been presented to specifically support this position. Moreover, if landlords of lower income persons were required to buy more expensive, albeit, more efficient appliances, as a result of standards, the landlords would probably recover the increased first cost through higher rents or through a reduction in services. Thus, it is not clear that standards requiring higher efficiency products would generally benefit lower income renters.

Moreover, it would be difficult to quantify an economic benefit of standards for lower income persons. For example, while a large percentage of

lower income persons are renters, rather than owners of their dwellings,⁴⁹ the largest energy using products (furnaces, water heaters, and central air conditioners) in multi-family, rental buildings are often, if not usually, not consumer appliances under the Act and therefore would not be subject to possible standards.⁵⁰ Room air conditioners, moreover, often are not and freezers are almost never provided as equipment in lower cost rental units, but must be bought by the lower income renter. Thus, the potential benefits to lower income renters would primarily be with respect to refrigerators and refrigerator-freezers. Even here, however, if a landlord provides the cheapest equipment, it would likely be a manual defrost refrigerator, which even now uses less energy than almost all other refrigerator-freezers would under the most stringent standard. Finally, some lower income renters will have their utility costs included in the rent, so that the landlord, rather than the renter, would be faced with the fuel costs.⁵¹ In addition, some landlords might pass through any increase in first cost for equipment in the rent, or might diminish services in order to recover the cost of the equipment. Thus, DOE believes that lower income renters would as a group generally neither benefit from an energy efficiency standard, nor be harmed by a standard. However, individual renters could face reduced housing choices if landlords are required to install more expensive equipment as a result of appliance efficiency standards.

In weighing the impact of a standard on lower income purchasers of appliances against the impact of a standard on lower income renters, DOE is aware that in a sense it is weighing unlike impacts. Thus, it would be improper merely to weigh the number of persons benefited against the persons burdened or the dollars of economic burden against the dollars of economic benefit. In the product-specific discussion, the weighing in terms of the particular product is addressed.

⁴⁸ Almost sixty percent of lower income households rent, rather than own, their homes. See Housing Characteristics, 1980, DOE/EIA-0314 (1982), at Table 5.

⁴⁹ Over 5 million households live in buildings with five or more units with a central heating system. Over 11 million households live in buildings with two or more units with a central hot water system. Over 1 million households live in buildings with five or more units with a central air conditioning system. See Housing Characteristics, 1980, DOE/EIA-0314 (1982), at Table 19.

⁵¹ Only 55 percent of renters pay all their utilities themselves. Over 15 percent of renters have all their utilities paid by their landlord; that is, their utilities are included in the rental cost. Housing Characteristics, 1980, DOE/EIA-0314 (1982), at Table 3.

2. *Life Cycle Cost.* Section 325(d)(2) of the Act requires DOE, in weighing the benefits and burdens of possible appliance standards, to consider "the savings in operating costs" over the life of product compared to any increase in the price and maintenance expenses of a product resulting from the imposition of a standard. In other words, DOE is to consider the effect on life cycle costs to a consumer that would result from standards.

The Net Present Value (NPV) analysis is a measurement of the difference between a standards case and the base case for all the units of a product purchased over a given period⁵² in terms of a discounted present value of the life cycle costs of those units. See EcAD, at 14. This measurement is made by the ORNL Model.

A positive NPV for a product at a given standard level indicates that, if that standard were adopted, consumers of that product as a whole would save that much more money in fuel costs over the lifetime of the product, discounted to 1980, than they would pay in increased first costs for more efficient products, discounted to 1980 compared to the situation where no standard is adopted.⁵³ A positive NPV does not signify that the economy as whole benefits (as opposed to consumers of that product). The NPV analysis only compares consumer fuel cost savings against increases in product prices to consumers. For example, the government costs in maintaining and enforcing a particular product standard are not subtracted from the net present value. The NPV analysis is similar to the Life Cycle Cost (LCC) analysis, see *infra*, and the greatest NPV generally should occur at the standard level set at the LCC minimum for the product.⁵⁴ The

⁵² In the April 1982 proposal all NPV calculations were made for purchases over the period 1987-2005. While the time period for measuring energy savings has generally been changed from the period 1987-2005 in the April 1982 proposal, to the period of the average life of the product in question, see 47 FR 57203, DOE has not changed the time period for the NPV calculations. This is due to DOE's determination that there would be no substantial change in the results of the NPV analysis as a consequence of changing the time period, and the coding changes would have been both expensive and time consuming.

⁵³ All NPV's in the analysis overstate the benefit of standards to some degree because the base case analysis did not subtract manufacturer compliance costs, e.g., certification and testing, from the base case product prices. This overstatement, however, is minor.

⁵⁴ Because the NPV analysis is done using the ORNL Model and the LCC analysis is done through its own model, this direct correlation may not exist between the two models' data.

⁴⁹ A number of commenters on the April 1982 proposal noted that Appendix J of the EcAD was primarily concerned with measuring the impacts of standards on income inequality in the United States. The conclusion of that analysis in Appendix J was that efficiency standards would have no significant impact on income inequality. DOE did not mean to suggest otherwise, and no commenter disputed that conclusion, so DOE has not updated that analysis. The income inequality analysis, however, based on life cycle costs is different from the analysis of the impacts of increased first costs.

NPV for each product at the different standard levels is identified in the product-specific analysis.

The only comments directly concerning the NPV analysis were those of the NRDC and the California Energy Commission (CEC), criticizing the DOE's use of the 10 percent discount rate indicated in OMB Circular A-94 for discounting future energy cost savings to 1980. Essentially, these commenters complained that Circular A-94 did not apply to regulatory programs but only to Government investments, and that a lower discount rate was more appropriate. Nothing in Circular A-94 limits its application to consideration of Government investments or excludes regulatory programs. Even if there were, if a 10 percent discount rate is an appropriate basis for measuring the present value to the Government of future savings the commenters have not sufficiently established why the present value to consumers from the same future savings should be different. Moreover, DOE believes a 3-6 percent discount rate, suggested by the commenters, is inappropriately low. See CEC, No. 2097, Comments of the Staff of the Conservation Division of the CEC, at 1 (assuming 40 percent marginal tax rate for consumer).

Separate from the NPV analysis, DOE also conducted an LCC analysis of individual products and classes of products to assess the life cycle cost minima for the various classes and products. See EcAD, at Appendix G. The LCC analysis, therefore, is useful in identifying those energy efficiency levels at which the average consumer's economic benefits are maximized and his burdens minimized.

In the absence of mandatory government standards, a consumer purchasing an appliance has the freedom of choosing among various models of a product and, with sufficient information, can choose the model which offers the features which the consumer requires, including the lowest life cycle cost. This would enable the consumer to purchase the most cost-effective product.⁴⁵ Depending upon the level at which a mandatory efficiency standard is set, a consumer may be deprived of the freedom to purchase the most cost-effective product. That is, if the minimum energy efficiency standard is sufficiently demanding, the resulting

first cost increase to achieve that efficiency may be greater than the discounted value of the energy saved. Thus, it is possible for a mandatory efficiency standard to eliminate from the market the most cost-effective product for a particular consumer and consequently penalize that consumer. Moreover, an energy efficiency standard could also result in the elimination from the market place of the most cost-effective product for the average consumer.

In the April 1982 proposal DOE indicated its view that, if a standard would have the effect of eliminating from the market an existing appliance that would have a lower life cycle cost to the average consumer than the standard level, DOE would consider that a substantial burden in assessing the benefits and burdens of a standard to determine its economic justification. See 47 FR 14432. No commenter took issue with this view.⁴⁶

If a particular standard analyzed would have the effect of barring the most cost-effective model of a product from the marketplace, this is raised in the product-specific discussion.

In both the April 1982 proposal and the comments thereon, it was noted that the LCC analysis was based on the average consumer in terms of both energy prices and usage. It was also noted that consumers with below average energy prices or usage might be penalized even if a standard did not penalize the average consumer. In the April 1982 proposal, DOE conducted a sensitivity analysis to assess to what extent this might be true. With the exception of certain classes of central and room air conditioners, however, the sensitivity analysis discerned no difference in the life cycle cost minima for the products analyzed at the different usage and fuel prices analyzed. The April 1982 proposal acknowledged that the sensitivity analyses were limited, especially in variations on fuel prices⁴⁷ and the fact that there was no analysis of combinations of low prices and low usage. Many commenters stressed that these limitations undermined the conclusion of the sensitivity analysis that in most cases variations from the average did not

affect the life cycle cost minimum for a product.

As part of this final rule DOE conducted a regional sensitivity analysis to determine with respect to each State (and in some cases, portions of States) what the life cycle cost minimum was for certain classes of products. In this way the effect of combinations of usage and fuel price differences from the national average could be tested in terms of actual impacts of possible standards. That is, rather than reflecting whether a standard would or would not ban the most cost-effective model for some theoretical consumer with particular usage and fuel price characteristics, this analysis shows in what States, if any, the most cost-effective model would be banned by a particular standard. The results of the analysis, as appropriate, are discussed in the product-specific discussion.

In the April 1982 proposal, DOE compared the life cycle cost of the average product in 1978 to the life cycle cost of a product meeting the various possible standards levels. In most cases the life cycle cost of a product meeting the standard level was less than the life cycle cost of the average 1978 product. This comparison, however, it was noted, was not particularly meaningful. See 47 FR 14432. While this analysis has been updated, see Supplement, DOE has also compared the life cycle cost of the projected average product in 1987 (the year standards would apply to the life cycle cost of products at the various standard levels). This analysis more appropriately reflects the dollar difference in the average product's life cycle cost in a no-standard environment and a standard environment. The results of this analysis are reflected in the product specific discussion.

Some manufacturers complained that DOE did not include increased maintenance costs as part of the life cycle cost analysis except with respect to the product furnaces. DOE has considered these comments, but there is insufficient evidence of increased maintenance costs occurring as a function of increased efficiency of appliances to justify any change in the LCC analysis.

III. Product Specific Discussion

a. Refrigerators and Refrigerator-Freezers

1. *Technical Issues.* The industry members who commented on the engineering analysis for refrigerators and refrigerator-freezers were generally in agreement that the specific design options considered by DOE for

⁴⁵ Obviously, where different models have different features, the consumer may make purchasing decisions based on the value which the consumer places on a particular feature. Lower energy use which would result in lower life cycle costs is only one feature of an appliance, and would be subject to the same type of consumer decision-making as would other features.

⁴⁶ In the December 1982 final rule, DOE found that the only standard levels that would save any energy would penalize the average consumer by prohibiting the most cost effective models of the products in question. See 47 FR 57211-57213.

⁴⁷ The April 1982 proposal's sensitivity analysis only varied fuel prices by less than 5 percent from the average price, whereas differences in electricity prices in the U.S. can vary 80 percent from the national average. See 47 FR 14433.

improving the efficiency of this product are appropriate. However, the General Electric Company (GE) questioned the cost-effectiveness of two of these design options. GE stated that the double door gasket design option is cost-effective only on automatic defrost models. For manual defrost and for partial automatic defrost models, GE contended that there is little improvement in efficiency associated with a second door seal. The second design option GE questioned was reducing the heat load of through-the-door service features. GE contested using foam insulation to reduce the heat load in through-the-door service as a cost-effective design option. GE did not provide any test data in support of its position nor any energy savings versus cost estimates to demonstrate that either of these design options are not cost-effective. In its own investigation of this issue, DOE has not found evidence in the public record or in any substantiated technical literature to suggest that the cost and efficiency values developed for these design options are inaccurate. Therefore, DOE has made no change to its engineering analysis regarding these design options.

Whirlpool Corporation expressed concern that while the efficiency levels which DOE evaluated in its engineering analysis may be technologically feasible, in many cases they can only be attained by sacrificing product utility. Whirlpool set forth several factors, which are considered in developing a new refrigerator or freezer design, and stated that no single factor can be maximized without creating quality or performance problems that consumers would find unacceptable. An example cited by Whirlpool concerned the efficiency improvement associated with the direct replacement of fiberglass insulation with foam insulation in existing refrigerator and freezer designs, a design change that has already been effected by some manufacturers. Whirlpool stated that such design change has generally been applied to units that already have relatively thick wall cavities. Whirlpool asserted that if DOE were to issue a standard for a particular class of product based on the efficiency of such units, it could have the adverse impact of eliminating designs which incorporate thinner walls to offer consumers the special utility of maximum internal volume for a given external size. Whirlpool alleged that this could adversely impact consumers in cases where a consumer's space is limited, resulting in the possible replacement of existing larger capacity refrigerators with units of smaller storage capacity because the new units

would be too wide or too high to fit into the space occupied by the existing refrigerator.

The EnAD identifies several design options that either increase the exterior dimensions of some classes of refrigerators and refrigerator-freezers or decrease the interior volume.³⁴ Such increases in exterior dimensions or decreases in interior volume, DOE agrees, would reduce utility. In the Supplement, *see infra*, DOE has analyzed the effects of high-efficiency compressors and separate evaporator coils for refrigerator-freezers. While the analysis did not specifically address use of such options to achieve levels of efficiency without any increase in interior dimensions or decrease in interior volume of refrigerator-freezers, DOE believes the efficiency levels analyzed as possible standards levels could, with these advanced design options, be reached without changes in exterior or interior dimensions, because the advanced design options would increase the efficiency of standard size units sufficiently to meet the standard levels.

Both the CEC and the NRDC commented that the highest efficiency level which DOE evaluated in its engineering analysis is below that which is technically feasible utilizing available technology. In addition NRDC and the City of New York alleged that a Japanese manufacturer, Toshiba, currently markets in Japan a high efficiency refrigerator, model GR-411, which consumes much less energy than the highest efficiency unit of comparable size manufactured in the United States. Annual energy consumption for the Toshiba GR-411 unit was said to be 550 kWh per year and its energy factor, 11.5. In response to these comments to the Association of Home Appliance Manufacturers and Whirlpool Corporation asserted that NRDC and the City of New York were in error in describing the Toshiba unit as a "frost free" design. According to Whirlpool Corporation, the unit is a "cycle defrost" mode with an manual defrost freezer compartment. Whirlpool remarked that the comparison made by the City of New York between the energy consumption of the Toshiba unit and that of the highest efficiency domestic unit of comparable size should reflect some difference in energy consumption since the domestic unit is a "no-frost" model.

³⁴ The depth of units is increased 0.5 inches in some design options for some classes and the width increased 1 inch in some design options of some classes. The interior volume is decreased 0.4 cubic feet in some design options of some classes.

As discussed *supra*, DOE did not update the standard levels for refrigerators because of serious time constraints. DOE could not assess all new models now available in the marketplace, alter the "cost books" for these products, and rerun all its computer models in a reasonable time frame, especially in light of the court-approved deadlines set by a settlement agreement with Consumers Union and NRDC. Moreover, because of the changing nature of refrigerators, which have shown substantial energy improvements over the last several years, any additional delay to increase standard levels would not guarantee inclusion of the most efficient model as a standard level by the date of issuance of the final rule. However, within the time available DOE did analyze two additional design options for refrigerators and refrigerator-freezers which are recently available in the market. They are high-efficiency compressors and separate evaporator coils for the freezer and the fresh food compartment. As a result of the analysis of these additional design options, DOE established one additional cost-efficiency data point for each of the seven classes of refrigerators and refrigerator-freezers. In each case, the new efficiency data point was higher than the highest one previously considered. Moreover, while DOE did not consider the Toshiba refrigerator model in its engineering analysis, the analysis of the partial automatic defrost class included an additional design option of a high efficiency compressor which raised the highest efficiency level analyzed to an energy factor of 12.3. The Toshiba unit has a lower energy factor which was not considered in the analysis. All of the new data points were included in the ORNL Model, improving the cost efficiency curves and the ORNL Model's life cycle cost curve at the higher efficiency levels.

2. Significance of Energy Savings. The table below reflects the energy savings projected by the ORNL model attributable to a standard for refrigerators and refrigerator-freezers at each of the three standard levels analyzed over the period 1983-2005.

Level 1—0.25 Quads
Level 2—0.85 Quads
Level 3—1.65 Quads³⁵

³⁵ DOE ran two sensitivity analyses of the ORNL Model projections of energy savings. One substituted a constant distortion rate for the algorithm; the other substituted the historical rate of increased efficiency for that derived by the ORNL Model. At level 3 the results were 2.03 Quads and 0.27 Quads, respectively. Neither amounts would satisfy the first two tests of significance.

DOE projects that a savings of 1.65 Quads of electricity would not save more than 0.044 Quads of oil and 0.101 Quads of natural gas over the 19-year period⁶⁰ which averages to 1,084 barrels per day of oil savings and 14,227 mcf per day of natural gas savings. This is only 11 and 25 percent, respectively, of the amount DOE deems significant.

The maximum savings attributable to standards would constitute less than 0.22 percent of the electricity used in the Nation over the 19-year period.⁶¹ This is only 0.22 percent of the one percent savings that DOE deems significant.

For the year 2006, the highest level of savings attributable to standards would constitute 14.59 percent of the energy that would have been consumed by refrigerators and refrigerator-freezers in the absence of standards, which is less than the 16.67 percent that DOE would deem significant.⁶²

On the basis of the above, DOE concludes that standards for refrigerators and refrigerator-freezers would not result in a significant conservation of energy.

3. Economic Justification. A. Economic Impact Manufacturers. In the EnAD accompanying the April 1982 proposal, the DOE indicated that the cost for the most prevalent class of product, the automatic-defrost refrigerator-freezer with top mounted freezer, increases less than \$10.00 or 5 percent over the baseline unit. Other models, however, especially the lowest priced classes of product, had increased costs of up to 10 percent. See EnAD, Tables 1.15 and 1.16. None of these figures was disputed in the comments received on refrigerators.

The effects of these increased costs on medium-sized firms is reflected in the FIM. The FIM predicts that a prototypical medium-sized manufacturer would suffer a 15 percent increase in business risk at level 3 and a 25 percent increase in business risk at the next lowest level. See Supp. to EcAD, Table

A.4-1. By 1991 (the last year of the analysis), the FIM predicts that the prototypical medium-sized manufacturer would have a 94 percent decrease in profitability, while the large and small manufacturers would have a 5 and 11 percent decrease, respectively. See *Id.*, Table A.4-2. At the standard level that would save the greatest energy, the prototypical small firm's debt/equity ratio deteriorates by almost 50 percent. See *Id.*, Table A.4-8.

As indicated in the General Discussion section, the FIM impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments.⁶³ In the case of refrigerators and refrigerator-freezers, in the base case by 1987 the ORNL Model projects that the SWEF will be 6.62 EF (Energy Factor). From the EnAD this would indicate that 52 percent of the necessary investment to achieve the highest standard level would be made as part of historically indicated investments. Thus, the FIM negative impacts actually attributable to the highest standard level should be reduced by about 52 percent. Even with this reduction, the negative impacts of standards for refrigerator-freezers remain substantial for medium-sized firms.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated previously, would be to require certain investments to be made that might not otherwise have been made. These required investments may result in the forgoing of certain other investments which would be more beneficial to the manufacturer. Commenters who addressed this point generally supported this conclusion.

B. Economic Impact on Consumers. As indicated above, and in the April 1982 proposal, DOE found that the greatest increased costs to consumers for refrigerators and refrigerator-freezers are in the lowest priced classes of products. EnAD, Table 1.16. Nevertheless, DOE's analysis of appliance purchases forgone as a result of increased price indicates that the income elasticity of refrigerators is extremely low, suggesting that hardly any refrigerator purchases would be forgone as a result of efficiency standards. Since many lower income

consumers rent housing that includes refrigerators and refrigerator-freezers, the imposition of standards on these products could positively benefit these consumers by lowering electricity costs. Although, on the other hand, if landlords furnish more efficient units it is quite probable that they would recover the increased first cost through increased rents or through reduced services. On this basis, DOE concludes that the total impact of standards for refrigerators and refrigerator-freezers on lower-income consumers is slightly positive. DOE is unable to quantify this benefit but given the relatively small life cycle cost savings for the least expensive classes (which low income renters would most likely be provided by landlords) and the number of low income persons who both rent and pay all their utilities, DOE believes the benefit to low income consumers as a class is slight.

C. Life Cycle Cost. No specific comments were received concerning DOE's determinations on the life cycle cost of refrigerators and refrigerator-freezers. The LCC analysis indicates that the possible standard level with the lowest life cycle cost is level 3. See Supp. to EcAD, Appendix G. This indicates that the highest standard level would not cause any economic burden on the "average" consumer.

The NPV analysis indicates that if a standard were adopted at level 3 there would be a net present value of \$1,961.1 million from energy savings over the period 1987-2024. If the net present value were spread across the Nation, the resulting benefits would be less than 80 cents a year per household.

D. Energy Savings. As indicated previously, the maximum savings attributable to standards for refrigerators and refrigerator-freezers under any of the analyses would be 1.65 Quads of electricity.

E. Lessening of Utility or Performance of Products. In the April 1982 proposal, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of refrigerators and refrigerator-freezers. Whirlpool commented that at level 2 standards, there is some loss of utility for most classes and a significant loss in a few. At level 3 standards, Whirlpool stated that the suggested levels would result in significant loss of utility. The manufacturer commented that DOE did not consider exterior dimensions in its analysis, and that because of space limitations in current kitchens, manufacturers would have to sacrifice interior volume, thereby reducing the appliance's utility to the consumer. In

⁶⁰ This assumes that oil constitutes 2.65 percent and gas 8.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. In the absence of specific data for each of the years 1987-2005, DOE used these years, which it believes is a conservative choice. See 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173 (81)/3, February 1982.

⁶¹ Electricity used over the period 1987-2005 is estimated to be 756.6 Quads. It is derived through linear extrapolation of the estimate made for the years 1985, 1990 and 2000. U.S. Department of Energy, July 1981, "The National Energy Policy Plan," Table 1.

⁶² As indicated above, DOE ran two sensitivity analyses of the level 3 savings. Under the constant distortion rate the percentage savings are 15.94 percent. Under the historical trend analysis the percentage savings projected would be 1.65 percent

⁶³ This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product) prototypical firm. The negative impacts experienced by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

the technical discussion section, DOE concluded that this comment had merit, but that use of more recent, high-technology designs might be able to avoid this loss of utility. There is, however, no assurance that future utility or performance of refrigerators and refrigerator-freezers would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

F. Impact of Lessening Competition. The Attorney General has determined that the absence of a Federal standard for refrigerators and refrigerator-freezers would have no impact on competition.

G. Need to Save Energy. Refrigerators and refrigerator-freezers use electricity exclusively as their energy source. While almost three percent of the Nation's electricity powers refrigerators and refrigerator-freezers, less than eight percent of that three percent would be saved by standards for this product.

H. Other Factors. The negative impacts on small manufacturers of refrigerators for this product have been presented above. Only with respect to a small firm's debt to equity ratio, however, was there any significant negative impact. In the April 1982 proposal, however, DOE explained its belief that the FIM understates the negative impact of standards on small firms. No comments were received disputing this general conclusion. Thus, DOE concludes that the negative impacts projected by the FIM (as adjusted) understate the negative impact of standards of small manufacturers of refrigerators and refrigerator-freezers.

Weighing of Factors

The benefits of a standard for refrigerators and refrigerator-freezers are, compared to the base case of no standards, that it would save energy, have a positive net present value and have a slightly positive impact on lower-income consumers. At level 3 these benefits are not minimal, but over the period of time involved and numbers of households involved, the benefits remain relatively small.

The burdens of a standard are: (1) It would adversely affect the financial well-being of medium-sized firms making refrigerators and refrigerator-freezers, in some cases causing a significant threat to their continued existence; (2) It might lessen the utility or performance of some current smaller, space constrained models and lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; and (3) It could cause investment resources by manufacturers

of these products to be allocated in a manner that is not the most beneficial to the manufacturer.

In light of all the factors DOE has determined that the burdens of an efficiency standard for refrigerators and refrigerator-freezers outweigh the benefits.

b. Freezers

1. Technical Issues. The industry members who commented on the engineering analysis for freezers were generally in agreement that the specific design options considered by DOE for improving the efficiency of this product are appropriate. However, Whirlpool Corporation expressed concern that while the efficiency levels which DOE evaluated in its engineering analysis may be technologically feasible, in many cases they can only be attained by sacrificing product utility. Whirlpool set forth several factors which are considered in developing a new refrigerator or freezer design and stated that no single factor can be maximized without creating quality or performance problems that consumers would find unacceptable. An example cited by Whirlpool concerned the efficiency improvement associated with the direct replacement of fiberglass insulation with foam insulation in existing refrigerator and freezer designs, a design change that has already been effected by some manufacturers. Whirlpool stated that design change has generally been applied to units that already have relatively thick wall cavities. Whirlpool asserted that if DOE were to issue a standard for a particular class of product based on the efficiency of such units, it could have the adverse impact of eliminating designs which incorporate thinner walls to offer consumers the special utility of maximum internal volume for a given external size. Whirlpool alleged that this could adversely impact consumers in cases where a consumer's space is limited, resulting in the possible replacement of existing larger capacity freezers with units of smaller storage capacity because the new units would be too wide or too high to fit into the space occupied by the existing freezer.

Unlike refrigerators, where kitchens and kitchen-cabinetry are designed with a standard-size refrigerator in mind, freezers do not occupy such an accustomed niche in most homes. Consequently, small increases in exterior dimensions of freezers would not appear to have as great an impact on utility as similar increases in refrigerators. Moreover, it appears that the use of advanced, high efficiency compressors not addressed in the EnAD,

see *infra*, could allow manufacturers to reach levels of efficiency equivalent to possible standards levels without changing any dimensions of the freezer.

Commenters also stated that the highest freezer energy efficiency level analyzed by DOE is below that which is technically feasible utilizing available technology. As discussed *supra*, DOE has concluded that the necessary assessment of new models in the market for possible standard levels, the inclusion of these new levels in the "cost book" and the rerunning of all DOE's computer models would entail considerable time. As a result of court approved deadlines resulting from settlements with Consumers Union and NRDC, DOE did not have sufficient time in which to conduct such an analysis. Moreover, had DOE conducted this analysis, by the time of the final rule, newer, more efficient freezers would have likely appeared in the market place. However, DOE has reviewed its engineering analysis and had added an additional design option, improved compressors, for all classes of freezers. As a result, one additional cost-efficiency point has been established for each of the three classes of freezers. In each case, the new efficiency data point was higher than the highest one previously considered. These new data points were included in the ORNL Model, improving the cost-efficiency curves and life cycle cost curve at higher efficiency levels.

2. Significance of Energy Savings. The projected energy savings attributable to a standard for freezers at each of the three standard levels considered over the period 1987-2007 are:

Level 1—0.19 Quads

Level 2—0.35 Quads

Level 3—0.58 Quads⁶⁴

A savings of 0.58 Quads of electricity would save approximately 0.015 Quads of oil and 0.036 Quads of natural gas over the 21-year period.⁶⁵ At most, this

⁶⁴ DOE ran two sensitivity analyses of the ORNL Model projections of energy savings. One substituted a constant distortion rate for the algorithm; the other substituted the historical rate of increased efficiency for that derived by the ORNL Model. At level 3 the results were 0.686 Quads and 0.162 Quads, respectively. Neither amounts would satisfy the first two tests of significance.

⁶⁵ This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. In the absence of specific data for each of the years 1987-2007, DOE used these years, which it believes is a conservative choice. See 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173 (81)/3, February 1982.

averages to 347 barrels per day of oil and 4,556 mcf per day of natural gas. This is only 4 percent and 8.1 percent, respectively, of the amount DOE deems significant.

The maximum savings attributable to standards would constitute less than 0.07 percent of the electricity used in the Nation over the 21-year period.⁶⁶ This is only 7 percent of the one percent savings that DOE deems significant.

For the year 2008, the highest level of savings attributable to standards would constitute 13.58 percent of the energy that would have been consumed by freezers in the absence of standards, which is less than the 16.67 percent that DOE would deem significant.⁶⁷

On the basis of the above, DOE concludes that standards for freezers would not result in a significant conservation of energy.

3. Economic Justification. A. Economic Impact on Manufacturers. The EnAD accompanying the April 1982 proposal indicated that the per unit increased cost for a manufacturer to meet level 3 efficiency for manual defrost chest freezers, the most popular class, was \$9.05, or about 7 percent as compared to the baseline unit. However, per unit increased costs for a manufacturer to meet level 3 standards for an upright auto defrost freezer could be as much as \$23.85. See EnAD, Tables 2.11 and 2.12. None of these figures was disputed in the comments to the April 1982 proposal.

The impacts of these increased costs on manufacturers is reflected in the FIM. The FIM shows that a prototypical small-sized manufacturer would suffer an 80 percent increase in business risk at all of the efficiency levels that were studied as a result of standards and a medium-sized manufacturer would suffer a 35 percent increase in business risk at the efficiency levels 2 and 3. See Supp. to EcAD, Table A.4-1. By 1991 (the last year of the analysis), the FIM predicts that the prototypical small-sized manufacturer will have been losing increasing amounts of money during the last six years at levels 2 and 3. At level 3, the prototypical medium-sized firm's profitability decreases over 64 percent in the years following imposition of a standard. See *Id.*, Table A.4-3. The debt/equity ratio of the

prototypical small manufacturer of freezers deteriorates almost 6 percent and medium sized manufacturers, 183 percent. See *Id.*, Table A.4-8.

As indicated in the General Discussion section, the FIM impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments.⁶⁸ In the case of freezers, in the base case by 1987 the ORNL Model projects that the SWEF will be 12.13 EF. From the EnAD this would indicate that 40 percent of the necessary investment to achieve the highest standard level would be made as part of historically indicated investments. Thus, the FIM negative impacts actually attributable to the highest standard level should be reduced by 40 percent. Even with such a reduction, the negative impacts of standards for freezers remain substantial, especially for small and medium-size firms, which would have a substantial increase in business risk and a major drop in profitability.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated previously, would be to require certain investments to be made that might not otherwise have been made. These required investments may result in the forgoing of certain other investments which would be more beneficial to the manufacturer. Manufacturers generally supported this conclusion.

B. Economic Impact on Consumers. In the April 1982 proposal, DOE indicated that a level 3 standard for freezers increased prices to consumers by \$21.00 for the most prevalent class of product, chest freezers, to \$36.00 for an upright automatic defrost freezer. Upright manual defrost freezers, which constitute over 31 percent of the market, have increased prices of \$35.00. See EnAD, Table 2.12. Despite a relatively high elasticity of demand for freezers, compared to most other appliances, the absolute number and the percentage of freezer purchases forgone by lower income persons as a result of standards remains small. See EcAD, Table J-8. On the other hand, few if any lower income renters would be provided freezers by their landlords, and consequently, lower income persons do not suffer from third party effects with respect to freezers. Therefore, DOE concludes that energy

efficiency standards for freezers would cause some adverse impact on lower income persons by forcing some not to purchase freezers, but that this burden is very slight.

C. Life Cycle Cost. No specific comments were received concerning DOE's determinations on the life-cycle cost of freezers. The LCC analysis indicates that the possible standard level with the lowest life-cycle cost is level 3. See Supp. to EcAD, Appendix G. This indicates that the standard level would not cause any economic burden on the "average" consumer.

The NPV analysis indicates that if a standard were adopted at the level that would save 0.584 Quads, there would be a net present value of \$743.6 million from energy savings over the period 1987-2026. If the net present value were spread across the Nation, the resulting benefits would be less than 23 cents a year per household.

D. Energy Savings. As indicated previously, the maximum savings attributable to standards for freezers under any of the analyses would be 0.584 Quads.

E. Lessening of Utility or Performance of Products. In the April 1982 proposal, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of freezers. As indicated above, Whirlpool commented that at level 3 there is some loss of utility because manufacturers would have to sacrifice interior volume at the expense of maintaining exterior dimensions for some models. As indicated above, because DOE believes small changes in the exterior dimensions of freezers do not meaningfully impact purchasers and because new high efficiency compressors may make any change in dimensions unnecessary in order to achieve the standards levels, DOE has determined that an energy efficiency standard for freezers would not cause a decrease in the existing utility of freezers. There is, however, no assurance that future utility or performance of freezers would not be lessened as a result of disincentives caused by standards to investments in energy using new features.

F. Impact of Lessening Competition. The Attorney General has determined that the absence of a Federal standard for freezers would have no impact on competition.

G. Need to Save Energy. Freezers use electricity exclusively as their energy source. While almost one percent of the Nation's electricity powers freezers, less than seven percent of that one percent

⁶⁶ Electricity used over the period 1987-2007 is estimated to be 858.1 Quads. It is derived through linear extrapolation of the original estimate made for the years 1985, 1990 and 2000. U.S. Department of Energy, July 1981, "The National Energy Policy Plan", Table 1.

⁶⁷ As indicated above, DOE ran two sensitivity analyses of the level 3 savings. Under the constant distortion rate the percentage savings are 14.29 percent. Under the historical trend analysis the percentage savings projected would be 3.48 percent.

⁶⁸ This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product) prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

would be saved by standards for this product.

H. Other Factors. The significant negative effects of standards projected by the FIM on the prototypical small manufacturer of freezers were presented above. The business risk to small manufacturers was shown to be substantial. In the April 1982 proposal, however, DOE indicated its belief that the methodology of the FIM tended to understate the negative impacts of standards on small firms. No commenter disputed this conclusion, either generally or with respect to freezers. Thus, DOE concludes that the negative impacts of standards projected by the FIM (as adjusted) understate the negative impacts on small manufacturers of freezers.

Weighting of Factors

The benefits of a standard for freezers are, compared to the base case of no standards, that it would save energy and have a positive net present value. These benefits, however, are minimal in amount even under the highest standard level.

The burdens of a standard are: (1) It would adversely affect the financial well-being of small and medium-size firms making freezers, and in the case of small manufacturers, causing a significant threat to their continued existence; (2) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; (3) it could cause less than optimal allocation of investment resources by manufacturers of these products; and (4) it could preclude a small number of lower income persons from purchasing new freezers.

In light of all the factors discussed here and in the discussion section above, DOE has determined that the burdens of an efficiency standard for freezers outweigh the benefits.

c. Furnaces

1. Technical Issues. Some commenters suggested that DOE's analysis of furnace standards was lacking in that high efficiency designs such as the pulse combustion/condensing furnaces currently in the marketplace were not included as possible standards. On the other hand, the furnace industry reiterated its position that DOE should not consider standard levels that, in effect, require all designs of furnaces to operate at or near the condensing mode. These commenters felt that prescribed minimum levels as low as 80 percent AFUE would result in corrosion problems in most heat exchangers. This position was taken realizing that such a

level is below the 90 percent AFUE of the condensing furnace designs recently introduced into the marketplace. DOE is aware that research and development concerning condensing furnaces is ongoing, and questions concerning product life and pollution effects are not totally resolved. In view of the uncertainty associated with the condensing mode of operation, DOE has not analyzed standard levels that would require all future shipments to operate in the condensing mode, but realizing the availability of recently developed designs, DOE has included the condensing furnace designs in the engineering analyses cost efficiency relationships, in light of their general availability in the market.

The addition of pulse combustion/condensing furnaces and associated costs results in efficiency data points that are higher than those previously included. These new data points were included in the ORNL Model which improves the accuracy of the cost efficiency curves and the Model's life cycle cost curve at the higher efficiency levels and improves the Model's forecast of energy consumption. Today's addendum to the EnAD describes the incorporation of this additional data for four classes of gas furnaces.

2. Significance of Energy Savings. The projected energy savings attributable to a standard for furnaces at each of the standard levels analyzed under the ORNL Model over the period 1987-2009 is set forth in the following table.

Gas

Level 1—0 Quads
Level 2—0.01 Quads
Level 3—0.10 Quads
Level 4—0.09 Quads

Oil

Level 1—0 Quads
Level 2—0 Quads
Level 3—0.07 Quads
Level 4—0.07 Quads⁶⁹

No analysis was conducted for electric furnaces because they operate near 100 percent efficiency since all of the electric energy is transferred into the conditioned space.

Over the 23-year period, the greatest savings of natural gas under the ORNL Model is the equivalent of 11,582 mcf per day or 20.5 percent of the amount that DOE considers significant. The greatest

oil savings is 1,414 barrels per day or 14.1 percent of the amount that DOE considers significant.

No electricity is saved by the imposition of standards at any of the levels analyzed.

For the year 2010, the highest level of savings attributable to standards would constitute only 1.06 percent of the energy that would have been consumed by oil furnaces in the absence of standards and 0.28 percent of gas use, which is less than the 16.67 percent that DOE would deem significant.⁷⁰

On the basis of the above, DOE concludes that standards for furnaces would not result in a significant conservation of energy.

3. Economic Justification. A. Economic Impact on Manufacturers. The EnAD accompanying the April 1982 proposal indicated that the increased cost to a manufacturer to meet the level 4 requirement for gas, forced air furnaces, which constitute two-thirds of the market and are the least expensive, would be over \$100. However, the increased cost for the highest level analyzed of oil, forced air, indoor furnace, which is the most prevalent oil furnace, would be \$13.46 per unit. EnAD, Table 4.19.

None of these figures was contested in the comments to the April 1982 proposal.

The impacts of these increased costs are reflected in the FIM. The FIM predicts that a prototypical medium-sized manufacturer would suffer a 10 percent increase in business risk at all the efficiency levels that were studied as a result of standards. See Supp. to EcAD, Table A.4-1. By 1991 (the last year of the analysis), the FIM predicts that the prototypical medium-sized manufacturer will have a 32 percent decrease in profitability, while the large and small manufacturers will have a 23 and 7 percent decrease, respectively. See *Id.*, Table A.4-6. At the standard level that would save the greatest energy, the prototypical medium firm's debt/equity ratio deteriorates by almost 200 percent. See *Id.*, Table A.4-8.

As indicated in the General Discussion section, the FIM impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments.⁷¹ In the case of

⁶⁹ DOE ran two sensitivity analyses of the ORNL Model projections of energy savings. One substituted a constant distortion rate for the algorithm; the other substituted the historical rate of increased efficiency for that derived by the ORNL Model. At level 4 for gas, the results were 0.27 Quads and 1.352 Quads, respectively. At level 4 for oil, the results were 0.343 Quads and 0.916 Quads, respectively.

⁷⁰ As indicated above, DOE ran two sensitivity analyses of the level 4 savings. Under the constant distortion rate the percentage savings are 1.79 percent for gas and 2.23 percent for oil. Under the historical trend analysis the percentage savings projected would be 0.99 percent for gas and 14.85 percent for oil.

⁷¹ This conclusion, however, applies only to the "average" (in terms of the shipment weighted

furnaces in the base case by 1987 the ORNL Model projects that the SWEF will be 76.5 percent for gas and 85.9 percent for oil fired furnaces. From the EnAD this would indicate that 61 percent of the necessary investment to achieve the highest standard level would be made as part of historically indicated investments. Thus, the FIM negative impacts actually attributable to the highest standard level should be reduced by about 61 percent. Even with such a reduction, the negative impacts of standards for furnaces remain substantial, especially for medium-size firms, which have an unusual deterioration in their debt to equity ratio.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated previously, would be to require certain investments to be made that might not otherwise have been made. These required investments may result in the forgoing of certain other investments which would be more beneficial to the manufacturer. Manufacturers generally supported this conclusion.

B. Economic Impact on Consumers. DOE indicated in the April 1982 proposal that the price of level 3, gas forced air indoor furnace, the least expensive class of furnace, increases \$200 or over 50 percent to consumers. The oil forced air indoor furnace, the most prevalent class of oil furnace, increases in price to the consumer by approximately \$30.00, or about 5.4 percent. See EnAD Table 4.20. The most heavily impacted group, however, would be lower income (under \$7000 income) households, where 0.81 percent will not purchase new furnaces because of the increased price resulting from standards. In addition many low income consumers rent housing in buildings where heat is provided by the landlord through large, commercial units. Thus, these renters would not receive any positive benefit from standards, since they would not be provided by a unit covered by standards. However, those low income consumers who rent housing in smaller buildings and who pay their own utility bills would be benefitted by standards, since their utility bills would be decreased. Based on both the positive and negative impacts of standards on consumers, DOE has determined that the effect of standards on lower income consumers is essentially neutral.

C. Life-Cycle Cost. No specific comments were received concerning DOE's determinations on the life-cycle cost of furnaces. The LCC analysis indicates that standard levels 3 and 4 have the lowest life-cycle cost.⁷² See Supp. to EcAD, Appendix G. This indicates that the standard level would not cause any economic burden on the "average" consumer.

The NPV analysis indicates that if a standard were adopted at level 4 there would be a net present value of only \$108.4 million in gas and oil savings over the period 1987-2028. If the net present value were spread across the Nation, the resulting benefits would be less than 2 cents a year per household.

D. Energy Savings. As indicated previously, the maximum savings attributable to standards for furnaces under any of the analyses would be 0.17 Quads.

E. Lessening of Utility or Performance of Products. In the April 1982 proposal, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of furnaces. As indicated above, however, there is no assurance that future utility or performance of furnaces would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

F. Impact of Lessening Competition. The Attorney General has determined that the absence of a Federal standard for furnaces would have no impact on competition.

G. Need to Save Energy. Because DOE has not proposed any standard for electric furnaces, only oil and gas would be saved by standards for furnaces. The oil and gas savings from furnace standards are very small, amounting to 0.17 Quads.

H. Other Factors. The negative impacts projected by the FIM on the prototypical small manufacturer of furnaces were presented above. Although these impacts were not substantial, DOE has indicated its belief in the April 1982 proposal that the methodology of the FIM would tend to understate the negative impacts of standards on small firms. DOE received no comments on this factor concerning small furnace manufacturers, but no commenter disputed DOE's reasons for concluding that the FIM methodology tends to understate the negative impact of standards on small manufacturers. Consequently DOE concludes that the negative impacts projected by the FIM (as adjusted) understate the negative

impact of standards on small manufacturers of furnaces.

Weighing of Factors

The benefits of a standard are, compared to the base case of no standards, that it would save energy and have a positive net present value at standard levels 3 and 4. The benefits, however, are minimal in amount.

The burdens of a standard are (1) it would adversely affect the financial well-being of all firms making furnaces, especially medium-sized firms; (2) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; and (3) it could cause manufacturers of these products to forgo investments that are more beneficial to them.

In light of all factors, DOE has determined that the burdens of an efficiency standard for furnaces outweigh the benefits.

d. Water Heaters

1. Technical Issues. NRDC submitted the only comments which took exception to DOE's engineering analysis for water heaters. With respect to gas water heaters, NRDC stated that DOE did not consider certain technologies currently in the prototype stage, such as prototype gas water heaters with recovery efficiencies of 87-88 percent, undergoing testing at the American Gas Association Laboratories. Additionally, NRDC contended that DOE should have considered increased insulation thickness and intermittent ignition devices in conjunction with stack dampers.

DOE has considered NRDC's comment concerning the inclusion of prototype designs of gas water heaters in its analysis, but has concluded that prototype versions of products that are not available in the marketplace and for which production cost estimates are not available should not generally be included as design options in the Engineering Analysis. Because this is a prototype, there is no evidence that it may be mass-produced efficiently, has general market appeal or even whether this high level of efficiency could be obtained from a mass-produced model.

The "increased insulation thickness" design option mentioned by NRDC was included in DOE's technical analysis for gas water heaters although DOE used the term "improved insulation" since various grades of fiberglass were evaluated along with polyurethane foam. DOE's analysis of this design option resulted in an efficiency versus thermal resistivity curve which

efficiency of its product) prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

⁷² For oil furnaces, the savings at the two highest standards levels are approximately equal.

permitted DOE to predict the efficiency improvement for any increase in thermal resistivity of insulating material. Therefore, DOE's analysis already accounts for increasing the thermal resistivity of gas water heater insulation up to the level mentioned by NRDC. Moreover, any substantial change in the dimensions of water heaters as a result of thicker insulation could effectively preclude their installation in many replacement situations where the area for the water heater is constrained.

The design option of intermittent ignition devices (IIDs) in conjunction with stack dampers was rejected by DOE in its analysis because all IIDs require electrical power. Since conventional gas water heaters do not require an electrical hook-up to operate, a design option such as this would adversely affect the utility of gas water heaters, i.e., the capability to function without an electrical power supply. See the discussion concerning separate classes of gas kitchen ranges and ovens at 47 FR 14447. Moreover, installation costs would be substantially increased where there is no electrical service in the vicinity of a conventional gas water heater in need of replacement.

NRDC's final comment in regard to DOE's technical analysis for water heaters was that heat pump water heaters should have been included in the analysis and should serve as the basis of a standard for electric water heaters. DOE has not included heat pump water heaters in its analysis because the present DOE water heater test procedure is not valid for heat pump water heaters since it does not properly account for the energy used to extract heat from the surrounding air. Section 325(b) of the Act requires that no standard shall be prescribed for a product or class of product if no final test procedure has been prescribed. Therefore, space has been reserved for the class of heat pump water heaters.

2. Significance of Energy Savings. The table below reflects the energy savings projected by the ORNL Model attributable to a standard for water heaters at each of the three standard levels considered over the period 1987-1999.

Gas

Level 1—0.02 Quads
Level 2—0.06 Quads
Level 3—0.08 Quads

Electric

Level 1—0.18 Quads
Level 2—0.61 Quads

Level 3—1.18 Quads⁷³

The maximum savings over the 13-year period of 1.18 Quads of electricity amounts to 0.073 Quads of natural gas and 0.031 Quads of oil.⁷⁴ This is the equivalent of 15,918 mcf per day or 28 percent of the 56,530 mcf per day that DOE considers significant. The greatest oil savings is 1,135 barrels per day or 11.4 percent of the 10,000 barrels that DOE considers significant.

The maximum savings attributable to standards would constitute less than 0.25 percent of the electricity used in the Nation over the 13-year period.⁷⁵ This is only 25 percent of the one percent savings that DOE considers significant.

For the year 2000, the highest level of savings attributable to standards would constitute only 4.9 percent of the energy that would have been consumed by electric water heaters in the absence of standards and 1.69 percent of gas use, which is less than the 16.67 percent that DOE would deem significant.⁷⁶

On the basis of the above, DOE concludes that standards for water heaters would not result in a significant conservation of energy.

3. Economic Justification. A. Economic Impact on Manufacturers. The EnAD accompanying the April 1982 proposal indicated that the per unit increased cost to manufacturers to meet the level 3 efficiency for water heaters ranges from \$13.65 for a gas water heater made by a large manufacturer to \$14.85 for an electric water heater made by a medium-sized manufacturer. EnAD, Tables 3.11.

None of these figures were disputed in the comments to the April 1982 proposal. The FIM predicts that a prototypical medium-sized manufacturer would incur a 30 percent increase in business risk at

⁷³ DOE ran two sensitivity analyses of the ORNL Model projections of energy savings. One substituted a constant distortion rate for the algorithm; the other substituted the historical rate of increased efficiency for that derived by the ORNL Model. At level 3, for electricity the results were 2.00 Quads and 3.33 Quads, respectively; for gas, at level 3 for both cases, no energy would be saved. None of these amounts would satisfy the first two tests of significance.

⁷⁴ This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. In the absence of specific data for each of the years 1987-1999, DOE used these years. See 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173 (81)/3, February 1982.

⁷⁵ Electricity used over the period 1987-1999 is estimated to be 477.0 Quads. It is derived through linear extrapolation of the original estimate made for the years 1985, 1990 and 2000. U.S. Department of Energy, July 1981, "The National Energy Policy Plan," Table 1.

⁷⁶ As indicated above, DOE ran two sensitivity analyses of the level 4 savings. Under the constant distortion rate the percentage savings are 6.95 percent. Under the historical trend analysis the percentage savings projected would be 15.27 percent.

the efficiency levels that would save the two highest amounts of energy as a result of standards. See Supp. to EcAD, Table A.4-1. By 1991 (the last year of the analysis), the FIM predicts that the prototypical medium-sized manufacturer will have a 44 percent decrease in profitability as compared to the base case, while large and small manufacturers will have a 49 and 9 percent decrease, respectively. See *Id.*, Table A.4-5. At level 3 the prototypical medium-sized firm's debt/equity ratio deteriorates by approximately 32 percent, small manufacturers, 26 percent, and large manufacturers, 280 percent. See *Id.*, Table A.4-8.

As indicated in the General Discussion section, the FIM impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments.⁷⁷ In the case of water heaters, in the base case by 1987 the ORNL Model projects that the SWEF will be 84.1 EF for electric and 55.5 EF for gas water heaters. From the EnAD this would indicate that 19 percent of the necessary investment to achieve the highest standard level would be made as part of historically indicated investments. Thus, the FIM negative impacts actually attributable to the highest standard level should be reduced by 19 percent. Even with such a reduction, the negative impacts of standards for water heaters remain substantial, with a substantial increase in business risk for medium-size firms and a substantial deterioration in the profitability and debt/equity ratio for large firms.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated previously, would be to require certain investments to be made that might not otherwise have been made. These required investments may result in the foregoing of certain other investments which would be more beneficial to the manufacturer. Manufacturers generally supported this conclusion.

B. Economic Impact on Consumers. In the April 1982 proposal, DOE indicated that a level 3 standard for electric water heater increases the price to the consumer by \$31.30, while a level 3 gas water heater's price would be increased by \$29.90. These price increases are 19 percent and 15 percent greater.

⁷⁷ This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product) prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

respectively, than current prices. EnAD Table 3.12. Despite these price increases, DOE believes that the number of water heater purchases forgone would not be significant. See Supp. to EcAD, Appendix J. The most heavily impacted group would be lower income households (less than \$7,000 income). However, even in this group, less than one percent of those who would purchase water heaters, will not purchase them as a result of the increased prices attributable to standards. See *Ibid.* In addition, because many lower income renters live in dwellings which have commercial water heaters, rather than residential-sized water heaters, there would be no impact on the cost to these renters of hot water as a result of standards. Accordingly, DOE concludes that the effect of standards for water heaters on lower-income consumers is neutral.

C. Life-Cycle Cost. No specific comments were received concerning DOE's determinations on the life-cycle cost of water heaters. The LCC analysis indicates that the possible standard level with the lowest life cycle cost is level 3. See Supp. to EcAD, Appendix G. This indicates that the standard level would not cause any economic burden on the "average" consumer.

The NPV analysis indicates that if a standard were adopted at the highest standard level there would be a net present value of \$2,385.8 million in gas and electric savings over the period 1987-2018. If the net present value were spread across the Nation, the resulting benefits would be approximately 95 cents a year per household.

D. Energy Savings. As indicated previously, the maximum savings attributable to standards for water heaters under any of the analyses would be 1.26 Quads.

E. Lessening of Utility or Performance of Products. In the April 2 proposal, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of water heaters. However, there is no assurance that the future utility or performance of water heaters would not be reduced as a result of disincentives caused by standards to investments in energy-using new features.

F. Impact of Lessening Competition. The Attorney General has determined that the absence of a Federal standard for water heaters would have no impact on competition.

G. Need to Save Energy. More energy is used to power electric water heaters than gas water heaters. The maximum amount of electricity that would be saved by standards for water heaters

amounts to 0.25 percent of the electricity used in the Nation during this period. Similarly, the maximum gas savings attributable to standards for water heaters would account for about 0.006 percent of natural gas use during the same period.⁷⁸

H. Other Factors. The negative impacts projected by the FIM on the prototypical small manufacturer of water heaters were presented above. Although these impacts were not substantial, DOE has indicated its belief in the April 1982 proposal that the methodology of the FIM would tend to understate the negative impacts of standards on small firms. DOE received no comments in this area concerning small water heater manufacturers, but no commenter disputed DOE's reasons for concluding that the FIM methodology tends to understate the negative effect of standards on small manufacturers. Consequently, DOE concludes that the negative impacts projected by the FIM (as adjusted) understate the negative impact of standards on small manufacturers of water heaters.

Weighing of Factors

The benefits of a standard are, compared to the base case of no standards, that it would save energy and have a positive net present value. While the benefits at the highest standard level are not minimal, given the total energy used for water heaters, the savings benefits remain relatively small.

The burdens of a standard are: (1) It would adversely affect the financial well-being of medium-size firms making water heaters by increasing those firms' risk of doing business and decreasing profitability; (2) it would negatively impact the debt/equity ratio and decrease the profitability of large manufacturers of water heaters; (3) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; and (4) it could cause manufacturers of these products to forgo investments that are more beneficial to them.

In light of all of these factors DOE has determined that the burdens of an efficiency standard for water heaters outweigh the benefits.

e. Room Air Conditioners

1. Technical Issues. GE commented that DOE has overlooked the utilitarian aspects that a voltage break would

provide in the 8,000-14,000 Btu per hour product class. It is within this cooling capacity range that the power supply requirement steps-up from 115 volts to 230 volts. GE noted that a cooling capacity of 14,000 Btu per hour cannot be achieved for room air conditioners that operate at 115 volts.

DOE has already determined in its engineering analysis that the efficiency of room air conditioners is not significantly affected by voltage. Therefore, DOE has made no changes to the product classes for room air conditioners in response to this comment.

GE also took exception to DOE's position that there are no truly portable room air conditioners. GE commented that while the portability criteria cited by DOE can be considered a valid general definition, portability is best determined by consumer use patterns. GE referred to its "Carry-Cool" line as winning wide acceptance by consumers due to its relatively light weight, unique suitcase configuration, and ease of installation and removal. GE expressed concern that if energy efficiency standards were to be established for room air conditioners then, depending on the efficiency level selected to apply to the lower cooling capacity ranges, e.g., 4000 to 6000 Btu per hour, manufacturers could be forced to abandon their current smaller, lighter weight case sizes and use the largest case size within the product class in order to accommodate the larger coils that would be necessary to achieve higher efficiencies. Moreover, the larger coils themselves would add weight. According to GE, such a change would adversely affect consumer utility. DOE has reviewed the GE submission and concludes that its points are valid as to the possible effect of standards on the portability of some room air conditioners. See *infra*.

Both GE and Whirlpool Corporation commented that DOE's use of computer simulation to determine the design parameters associated with the four levels of efficiency investigation in each product class led to erroneous results. GE and Whirlpool agreed that DOE's computer simulation underestimated the required heat exchanger coil length associated with achieving higher efficiency levels. Whirlpool remarked that DOE's computer simulation overestimates heat exchanger coil air flow parameters. In comparing one of its current models which matches the 8000 Btu per hour example model at Level 3 efficiency (8.8 EER), Whirlpool found that its model has 30-50 percent more heat exchanger coil at about the same

⁷⁸ Natural gas used over the period 1987-1990 is estimated to be 243.8 Quads. It is derived through linear extrapolation of the original estimate made for the years 1985, 1990 and 2000. U.S. Department of Energy, July 1981. "The National Energy Policy Plan," Table 1.

air flow as the version. GE said that using its computer simulation technique and actual production model information, it calculated that the DOE estimates of required coil length are grossly underestimated.

DOE agrees that differences in coil length between different designs of room air conditioners of equal capacity and efficiency can occur. There are a number of factors which influence coil length in a room air conditioner design: coil fin type and spacing, compressor capacity and efficiency, air flow rates, fan, blower and fan motor efficiencies, to name a few. However, nothing in the comments made by GE or Whirlpool was sufficiently detailed for DOE to draw a conclusion that the computer simulation technique it employed was faulty.

Both GE and Whirlpool also commented that DOE did not disclose the compressor specifications and performance data used in its analysis leaving them unable to comment on the design cost and efficiency improvement projections that DOE associated with this design option. The compressor specifications and performance data used by DOE were taken directly from the 1980 Tecumseh product catalog.

AHAM, Whirlpool and Edison Products Company commented that reduced dehumidification capacity occurs as room air conditioner EERs increase beyond 8.0. They cited dehumidification performance of room air conditioners as a consumer utility consideration. DOE used latent heat removal relations based on standard industry data for heat exchangers in the room air conditioner analysis. Latent heat removal rates in excess of 20 percent were maintained throughout the analysis as recommended by manufacturers during the 1980 comment period. DOE has not changed the latent heat removal values in the present analysis.

Whirlpool commented that while it is accepted engineering practice to derate compressors to develop an air conditioner line with desired efficiency and capacity values, it is not always possible to derate to any pumping capacity. Since Whirlpool did not specifically comment that the derated values used in the engineering analysis cannot be attained, no changes have been made to the analysis regarding his comment.

NRDC commented that the DOE engineering analysis for room air conditioners does not consider currently marketed units which achieve higher efficiencies than those analyzed by DOE. DOE acknowledges the existence of such high efficiency units, and DOE

did, in fact, consider the technologies incorporated in these units. However, because of the manner in which the engineering analysis was conducted, it did not necessarily yield efficiency values as high as can be found in the marketplace. One reason is that separate analyses were made for each class of room air conditioners and the largest capacity unit in each class was selected for assessing efficiency improvements. As a result, the potential for increasing the cabinet volume of units in each class to accommodate larger coils was limited to the increase that could be made to the largest units in the class such that these units would still fit in existing window sizes or existing air conditioner sleeves. In addition, DOE imposed a minimum dehumidification performance requirement in its analysis in terms of a latent heat removal rate of greater than 20 percent. These parameters largely governed the highest efficiency levels which DOE analyzed. The available room air conditioner models with EERs in excess of the highest efficiency levels analyzed by DOE generally are the smaller capacity units within a product class housed in the same size cabinet as the larger capacity units in the class to accommodate their larger coils. Also, these units have low latent heat removal rates, perhaps lower than DOE's performance criteria. DOE considers the approach of its engineering analysis for room air conditioners appropriate for assessing potential efficiency improvements which do not adversely affect product utility. No changes in this analysis have been made in response to NRDC's comment.

2. *Significance of Energy Savings.* The table below reflects the energy savings projected by the ORNL Model attributable to a standard for room air conditioners at each of the standard levels considered over the period 1987-2001.

Level 1—0.25 Quads
Level 2—0.31 Quads
Level 3—0.37 Quads
Level 4—0.61 Quads⁷⁹

As indicated above, to determine the oil and gas savings that would result from electricity savings attributable to standards for non-seasonal appliances, DOE took the average of the national proportions of oil and gas projected for the years 1990 and 1995. As explained in

⁷⁹ DOE ran two sensitivity analyses of the ORNL Model projections of energy savings. One substituted a constant distortion rate for the algorithm; the other substituted the historical rate of increased efficiency for that derived by the ORNL Model. At level 4 the results were 0.63 Quads and 0.29 Quads, respectively. Neither amounts would satisfy the first two tests of significance.

the April 1982 proposal, however, see 47 FR 14450, because air conditioning is used most in the summer and because gas and oil are used in the generation of electricity in substantially different percentages in the summer than they are in the winter or on average over the year, DOE altered the percentages used for deriving oil and gas savings for non-seasonal electrical appliances. The annual use projections were increased or decreased, as appropriate, by the current percentage variation of the summer use of oil and gas to generate electricity from the annual use. *Id.* No commenter criticized this methodology or data, as far as it went. A few commenters, however, suggested that because air conditioning tended to be used at peak load periods and because oil and gas tended to be used as fuel to meet peak demand, even a summer average would understate actual savings of oil and gas attributable to standards for air conditioning equipment. These commenters did not submit data to support their claims, and DOE is unaware of any data series that would enable it to be more specific in assessing the oil and gas used to generate the electricity used by air conditioning equipment.

Using the above described methodology, DOE projects that standards for room air conditioners would not save more than 438 Bpd of oil and 7750 mcf per day of natural gas.⁸⁰ This is only 4 and 14 percent, respectively, of the amount DOE deems significant.

The greatest amount of savings would constitute only 0.10 percent of national electricity use over the average life of room air conditioners beginning in 1987.⁸¹ This is only 10 percent of the one percent savings that DOE deems significant.

For the year 2002, the highest level of savings attributable to standards for room air conditioners would constitute less than 13 percent of the energy used by room air conditioners in the absence

⁸⁰ In these computations, DOE has reduced the percentage of oil used to generate electricity by 14 percent and increased the percentage of gas by 10 percent from the average of the annual percentages for the years 1990 and 1995, with the result that oil represents 2.28 percent and gas 7.13 percent of the projected electricity savings. These percentage changes are derived from the actual percentage deviations in 1982. See *Electric Power Monthly*, DOE/EIA-0226.

⁸¹ Electricity used over the period 1987-2001 is estimated to be 566 Quads. It is derived through linear extrapolation of the estimates made for the years 1985, 1990, 2000. U.S. Department of Energy, July 1981, "The National Energy Policy Plan" Table 1.

of standards, less than the amount DOE deems significant.⁸²

On the basis of the above, DOE concludes that standards for room air conditioners would not result in a significant conservation of energy.

3. *Economic Justification. A. Economic Impact on Manufacturers.* The EnAD accompanying the April 1982 proposal indicated that the per unit increased cost to a manufacturer to meet the level 4 efficiency for the most prevalent class of room air conditioner—the below 8000 Btu/hr with outdoor side louvers, with 44 percent of the market—was a mere \$6.13, or less than 5 percent. However, all the rest of the classes of room air conditioners, making up 56 percent of the market, had significantly increased first costs, ranging from 15 to 50 percent increases. Also, it is noteworthy that medium-sized manufacturers had increased costs 15 to 20 percent higher than the large firms. Table 9.16 and Table 9.17.

None of these figures were disputed in the comments on the April 1982 proposal.

The negative effects of these increased costs on medium-sized manufacturers is reflected in the FIM. It shows that the risk of not making a profit increases as a result of standards by 15 percent for levels 1–3, and by 20 percent at level 4. The FIM also indicates that profitability for all sizes of firms decreases under all standards levels compared to the base case. By 1991 (the last year of analysis) medium-sized firms are no longer profitable at any standard level. In 1991 profitability for both large and small firms under level 4 decreases from the base case by 11 percent. The debt/equity ratio of large firms deteriorates 70 percent at level 3, while the debt/equity ratio of medium-size firms, already at very high levels, deteriorates by over 30 percent at levels 2 and 3.

As indicated in the General Discussion section, the FIM impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments.⁸³ In the case of

room air conditioners, in the base case by 1987 the ORNL Model projects that the SWEF will be 7.23 SEER. From the EnAD this would indicate that 72 percent of the necessary investment to achieve the highest standard level would be made as part of historically indicated investments. Thus, the FIM negative impacts actually attributable to the highest standard level should be reduced by about 72 percent. Even with such a reduction, the negative impacts of standards for room air conditioners remain substantial for medium-sized firms.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated previously, would be to require certain investments to be made that might not otherwise have been made. These required investments may result in the forgoing of certain other investments which would be more beneficial to the manufacturer. Manufacturers generally supported this conclusion.

B. *Economic Impact on Consumers.* In the April 1982 proposal DOE indicated that at a level 4 standard, while the most prevalent class of room air conditioner increased in price only \$18, the next two most prevalent classes increased in price more than 25 percent. Indeed, all the remaining classes, making up 56 percent of the market, increased in price 28 percent. Notwithstanding these price increases, DOE believes the number of room air conditioner purchases forgone will generally be insignificant. See Supplement. The most heavily impacted group, however, would be lower income (less than \$7,000 income) households, where over one percent of those who would purchase air conditioners will forgo purchases of room air conditioners because of their increased price as a result of standards. Persons who forgo purchases of new room air conditioners are likely to make do with older and more inefficient room air conditioners or to have to go without. Because renters most likely have to purchase their own room air conditioners, lower income renters generally would not suffer from landlords purchasing low efficiency room air conditioners. Standards, accordingly, would not particularly benefit renters. Thus, while the percentage and absolute number of lower income persons negatively impacted by standards for room air conditioners is small, so also is the number of lower income renters who would be positively benefited. On this basis, DOE concludes that the effect of standards for room air conditioners on lower income persons is essentially neutral.

C. *Life Cycle Cost.* A standard set at level 4 would require efficiencies for four of the six product classes to be at a level higher than the average consumer's life cycle cost minimum. That is, if a standard at level 4 were adopted, the most cost-effective room air conditioner for the average consumer in four of the six product classes would be banned from the market. A level 4 standard would actually increase the life cycle cost to the average consumer of three of the product classes compared to the 1987 SWEF in the absence of standards.

As indicated in the April 1982 proposal, DOE considers the increasing of life cycle costs to consumers and the banning of the most cost-effective products from the market to be substantial negative burdens. Commenters either supported or did not contest this conclusion. Accordingly, DOE considers that a level-4 standard for room air conditioners would cause a substantial burden by its effect on life cycle costs for large numbers of consumers.

The NPV for standards increases with the stringency of the standard, from \$359 million to \$645 million over the period 1987–2020. Spread over the Nation's 80 million households, this would equate to at most less than 24 cents per household per year.

D. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be 0.61 Quads of electricity.

E. *Lessening of Utility or Performance of Products.* In the April 1982 proposal, DOE explained that despite its best efforts to assure that the standards analyzed would not lessen the existing utility or performance of room air conditioners, DOE could not assure that the future utility or performance of room air conditioners would not be lessened as a result of disincentives caused by standards to investments in new, energy-using features. Several commenters supported this conclusion, but, perhaps more importantly, some indicated that some of the standard levels analyzed would decrease the utility of some existing room air conditioners. Specifically, GE maintained that in the class of room air conditioners with side louvers with capacity at or below 8,000 BTU/hr. the necessary changes to achieve the standards levels would make otherwise portable room air conditioners too heavy or bulky to be portable. Above, in the technical discussion, DOE concluded that this comment had merit. Consequently, DOE has determined that an energy efficiency standard for room air conditioners would cause a decrease

⁸² As indicated above, DOE ran two sensitivity analyses of the level 4 savings. Under the constant distortion rate the percentage savings are 14 percent. Under the historical trend analysis the percentage savings projected would be 5 percent.

⁸³ This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product) prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

in utility for small, portable room air conditioners, which constitute a very large fraction of the entire room air conditioner market.

F. Impact of Lessening Competition. The Attorney General has determined that the absence of a Federal standard for room air conditioners would have no impact on competition.

G. Need to Save Energy. Room air conditioners use electricity exclusively as their energy source. The electricity that would be saved by standards for room air conditioners would be concentrated in certain parts of the Nation and will be concentrated during summer peak load periods. While peak load savings are generally more valuable to utilities than normal load savings, the value of the savings depends greatly on the nature of the particular utility's peak load and consequently is highly regional in character. Thus, although savings of electricity associated with air conditioners are potentially more valuable than other forms of electricity savings, the need for those savings is more regional specific than is the case for other electricity savings.

H. Other Factors. The significant negative impacts projected by the FIM on the prototypical small manufacturer of room air conditioners were presented above. Only with respect to profitability was there any significant negative impact. In the April 1982 proposal, however, DOE indicated its belief that the methodology of the FIM would tend to understate the negative impacts of standards on small firms. No comments were received specific to small room air conditioner manufacturers, but no commenter disputed DOE's reasons for concluding that the FIM methodology tends to understate the negative effect of standards on small manufacturers. Consequently, DOE concludes that the negative impacts projected by the FIM (as adjusted) understate the negative impact of standards on small manufacturers of room air conditioners.

Weighing of Factors

The benefits of a standard for room air conditioners are, compared to the base case of no standards, that it would save energy and have a positive net present value. These benefits, however, are minimal in amount even at the strictest standard level. The benefits are even less at lower levels of mandated efficiency. While the electricity saved would generally be summer peak load and thereby more valuable than base load savings, these savings and the value of the peak load savings will be regional in nature, if not highly localized, rather than national in nature.

The burdens of any standard for room air conditioners are: (1) It will have a negative impact on manufacturers' profitability, which is especially severe on medium-size manufacturers; (2) it will create an increased business risk to medium-size firms; (3) it will increase substantially the debt/equity ratio of large and medium-size firms; (4) it would reduce the utility of a large portion of the most popular class of room air conditioner by effectively making it no longer portable; (5) it would create a risk to the utility or performance of room air conditioners in the future by creating a disincentive to the development of new, energy-using features; and (6) it would likely cause investment resources by manufacturers of these products to be allocated in a manner that is not the most appropriate for the manufacturer. At level 4 the standard would impose substantial additional burdens, prohibiting the most cost-effective room air conditioner for the average consumer in four of the six product classes and actually increasing the life cycle cost to the average consumer of three of the product classes.

In light of all the factors, on balance, DOE concludes the burdens of an efficiency standard for room air conditioners outweigh the benefits.⁴⁴

f. Central Air Conditioners

1. Technical Issues. The NRDC and some other commenters criticized DOE's analysis of the effect of possible standards for CACs because the highest standard level analyzed for some classes of CACs is lower than the efficiencies claimed for several models of similar sized CACs presently in the marketplace. As indicated in the General Discussion section, this is primarily the result of changes in the marketplace since the original engineering analysis was prepared, and the inability in the time since the April 1982 proposal to provide full "cost book" information on these models to enable full analysis of a potential standard at such a level.

With respect to CACs, however, there are additional factors that make the SEER level claimed by some manufacturers in currently marketed CACs inappropriate as a national standard. For example, some currently marketed high efficiency units obtain

their high efficiency at the expense of dehumidification and consequently do not achieve 20 percent dehumidification. DOE indicated in the EnAD that it believed that dehumidification below 20 percent represents a significant loss in product utility in many climatic conditions, and in some areas (i.e., areas with high humidity and temperatures) would be totally unacceptable. This conclusion was generally supported by the commenters that addressed it. Consequently, DOE has determined that any national standard should provide for at least a 20 percent dehumidification.⁴⁵ Other factors relate to aspects of the DOE test procedure for CACs. For example, the test procedures provide for testing CACs that have or do not have an integral fan (separate from the furnace) as part of the CAC unit. Where the CAC does not have an integral fan, the DOE test procedure assigns an electricity consumption factor for the separate furnace fan. If, however, the fan is integral to the CAC, it is to be specifically tested under the DOE procedure. Thus, a firm can obtain a higher SEER rating for the same CAC by substituting its own integral fan with a higher efficiency than the assumed DOE test procedure rating for a separate furnace fan. It would be improper, however, to set a standard premised on all CACs having their own fans, because such units would not be compatible with the majority of installations, which involve furnaces with their own fans.

Another example of the effect of the DOE test procedure on CAC SEER levels is the degradation coefficient. Under the DOE test procedure, a degradation coefficient (the measure of the efficiency loss due to the cycling of the unit) of 0.25 is assigned, unless a manufacturer conducts certain additional tests, in which case the actual degradation factor may be used. Because of their cost and complexity these additional tests have always been voluntary. The same CAC, however, might have its SEER increased 10 percent simply as a result of measuring its degradation factor rather than using the assumed degradation factor. DOE believes it would be inappropriate to set a national standard that would in effect require all manufacturers to conduct these additional tests.

While the above factors are indicative of some of the problems that would attend a national standard at such a level of efficiency, DOE has nevertheless updated the cost-efficiency

⁴⁴ In the April 1982 proposal DOE indicated that it had not specifically analyzed the class of room air conditioners that are reverse cycle air conditioners. Nevertheless, DOE indicated its belief that the burdens of a standard for that class would outweigh its benefits. No commenter indicated disagreement with that conclusion. Consequently, for the reasons stated in the April 1982 proposal, DOE concludes that a standard would not be economically justified for the class of reverse cycle room air conditioners.

⁴⁵ Lower dehumidification may well be appropriate in low humidity areas, e.g., New Mexico, Arizona, etc.

relationships in the EnAD to the extent possible in light of newly marketed products.

Accordingly, today's engineering analysis identifies units with two additional design options—two-speed compressors and all-aluminum heat exchangers. Today's engineering analysis also includes lower degradation coefficients for these two design options. The Supplement describes these additional design options. These changes lead to a higher efficiency level in the engineering analysis, which approaches the highest reports of efficiency in the marketplace. On the basis of this change in the engineering analysis, a new cost-efficiency point was added to the determination of the cost-efficiency curves of ORNL Model, thereby improving the accuracy of those curves and, consequently, of the Model's CAC life cycle cost curves.

The NRDC also disputed the validity of the cost-efficiency relationship reflected in the CAC standard level 4 (efficiency level 6 in Table 8.14 of the EnAD), noting that existing CACs in the marketplace with efficiencies at or above those of the CAC standard level 4 were available at prices well below those indicated in the EnAD. See NRDC, No. 2121, at 34-35. In light of the changes made to the engineering analysis described above, DOE believes there is substantial merit to NRDC's comment. Accordingly, DOE deleted the Table 8.14's level 6 cost-efficiency data point from the determination of the ORNL Model's cost-efficiency curve for CACs.⁶⁶

A number of commenters indicated that both DOE's national average CAC capacity and DOE's national average annual hours of CAC use were substantially too high. With regard to the average capacity, the ARI submitted comprehensive data concerning shipment weighted average capacities of CACs. The data indicated that the average capacity of CACs sold in the last few years has decreased. Accordingly, DOE has reduced the capacities in the analysis from 42,000

Btu/hr. to 39,000 Btu/hr. to reflect these changes.

Several manufacturers provided average annual hours of use for CACs that supported their contention that the usage rate in the ORNL Model was overstated. Specifically, some submitted field test data from various locations reporting compressor run times that were substantially less than would be indicated by DOE's assumed distribution of cooling load hours, see 10 CFR Part 430, Subpart B, App. M, § 6.1.3. Other commenters submitted usage data they used in assessing proper sizing recommendations for purchasers of this equipment. Finally, incidental usage rates indicated by some States were lower than what DOE's distribution would predict. Indeed, all of the evidence available indicated that the 1,000 hours average annual use for CACs was substantially overstated. Although there was no clear consensus for the average hours of use of CACs, there was general agreement that the value should be less than 1,000 hours/year.

It should be noted that there is a nonstochastic relationship between CAC capacities and hours of use. The product of average capacity and average hours of use will always underestimate the national average cooling load and, thereby, always underestimate the national energy consumption. This is due to the general tendency that higher than average capacities are associated with higher than average hours of use. That is, it is likely that CACs installed in the South will not only have higher than average capacities but also longer than average hours of use. This frustrates any attempt to determine a comprehensive national average hours of use value by simply averaging operating hours data. Accordingly, DOE has determined that the appropriate number of hours of operation to be used in the ORNL Model is not the national average but rather the number of hours of use that when coupled with the national average capacity, yields an energy consumption estimate that is consistent with the national energy consumption attributable to CACs reported by the Edison Electric Institute. Given national average capacity, national average efficiency, total households having CACs, and total national CAC energy consumption and solving for the usage yields a value approximately equal to 750 hours/year. Accordingly, the estimates of national energy use, energy savings, and net present value as determined by the ORNL Model, and the life cycle cost analysis reflect the

change in hours of use from 1,000 hours to 750 hours.

The effect on the outputs of the ORNL Model as a result of these changes to capacity and hours of operation is substantial and complicated. Most directly, the unit energy consumption of CACs in both the base and standard cases is substantially decreased. This has the effect of reducing the absolute energy savings attributable to standards.⁶⁷ On the other hand, the change in unit energy consumption resulting from usage and capacity changes has the effect of changing dramatically the CAC life cycle cost minimum in the ORNL Model.⁶⁸ Specifically, it is reduced to a level well below all of the standards levels. Because the ORNL Model's market penetration algorithm, *see supra*, projects that, with higher energy prices, marketplace efficiencies approach (but do not reach) the life cycle cost minimum, the effect of the reduced life cycle cost minimum is to reduce dramatically the projections of increased efficiencies in the base case. Moreover, because the standard levels are substantially higher than the life cycle cost minimum and because in the base case rational consumers would not knowingly purchase CACs at efficiency levels higher than the life cycle cost minimum, the market-based increase in efficiency would be capped at a level well below the standard levels. Thus, standards result in substantial energy savings relative to the base case, while the absolute savings are not correspondingly large. Consequently, the percentage decrease in energy use under standards compared to the base case is high. *See infra*.

2. Significance of Energy Savings. In the April 1982 proposal, DOE identified three aspects of the inputs to the ORNL Model peculiar to CACs that all tended to exaggerate the energy savings attributable to standards. These aspects were: optimistic estimates of real income growth, counting heat pumps as CACs, and counting all central air conditioning in multi-family housing as CACs subject to the consumer appliance program. See 47 FR 14449-50. The comments on the proposal supported DOE's conclusion that these aspects did indeed exaggerate the savings attributable to standards. In the April 1982 proposal, however, DOE had been unable to quantify the effect of any of

⁶⁶ While standard level 4 remains at the efficiency equal to that represented by the EnAD's level 6 for CACs, the cost to achieve that efficiency is less than that reflected in the EnAD's level 6. This reduced cost/price is reflected in both the ORNL Model's outputs and the Life Cycle Cost Analysis. It is not reflected in the FIM analysis, because DOE does not have sufficient data to create a full "cost book" for a new design option at this efficiency level. DOE does not believe, however, that the change in cost would be substantial enough to affect the conclusions of the FIM. It should be noted that a lower cost *per se* does not even necessarily mean that the negative impacts in the FIM would be reduced at all.

⁶⁷ Another cause of the decrease in absolute energy savings is the elimination of the counting of heat pumps as CACs.

⁶⁸ A similar effect can be seen in the two smaller-capacity classes of CAC as reflected in the life cycle cost analysis.

these aspects, and consequently had ignored them in its measurement of energy savings. For today's rule DOE was able to distinguish heat pumps from CACs in the ORNL Model, which has the effect of reducing the number of CACs in both the base and standards cases. The estimate of real income growth has not been changed, because insufficient evidence was provided in the rulemaking to justify a change. Finally, DOE did not distinguish consumer CACs subject to this rulemaking from large-scale central air conditioning equipment in multi-family buildings. By overcounting the number of CACs, the Model overstates the aggregate energy saved attributable to standards.⁹⁰

The table below reflects the energy savings projected by the ORNL Model attributable to a standard for CACs at each of the standard levels considered over the period 1987-1998.

Level 1—0.76 Quads
Level 2—0.92 Quads
Level 3—1.07 Quads
Level 4—1.23 Quads⁹¹

As indicated above, to determine the oil and gas savings that would result from electricity savings attributable to standards for non-seasonal appliances, DOE took the average of the national proportions of oil and gas projected for the years 1990 and 1995. As explained in the April 1982 proposal, however, see 47 FR 14450, because air conditioning is used most in the summer and because gas and oil are used in the generation of electricity in substantially different percentages in the summer than they are in the winter or on average over the year, DOE altered the percentages used for deriving oil and gas savings for non-seasonal electrical appliances. The annual use projections were increased or decreased, as appropriate, by the current percentage variation of the summer use of oil and gas to generate electricity from the annual use. *Id.* No commenter criticized this methodology or data, as far as it went. A few commenters, however, suggested that because air conditioning tended to be used at peak load periods and because oil and gas tended to be used as fuel to meet peak demand, even a summer

average would understate actual savings of oil and gas attributable to standards for air conditioning equipment. These commenters did not submit data to support their claims, and DOE is unaware of any data series that would enable it to be more specific in assessing the oil and gas used to generate the electricity used by air conditioning equipment. However, it should be noted that the measurement of peak load savings on a national basis has little efficacy. Although many utilities are summer peaking, CACs cannot be assumed to always be the major contribution to this increase in energy use. Room air conditioners and additional consumption in the commercial and industrial sector, may also be major factors in such an increase, depending upon the utility. Utilities are generally not now able to disaggregate these other uses from residential CAC use to determine what proportion, if any, of the peak load is attributable to residential CACs.

In addition, each utility has very different characteristics and needs. Some utilities, such as those in some Southern States peak both in the winter and the summer, because of the use of electric resistance heating in the winter. Furthermore, because some utilities have excess capacity which is relatively cheap, there is very little, if any value, in not using that capacity. Accordingly, although DOE recognizes that the saving of peak load electricity can be very valuable to some utilities, DOE cannot generalize and state that such a saving would in fact assist all utilities.

Using the above described methodology, DOE projects that standards would save at most only 1,101 Bpd of oil and 19,468 mcf per day of natural gas.⁹² This is only 11 and 34 percent, respectively, of the amount DOE deems significant.

The greatest amount of savings would constitute only 0.28 percent of national electricity use over the average life of CACs beginning in 1987.⁹³ This is only

28 percent of the one percent savings that DOE deems significant.

In the year 1999, however, the ORNL Model projects that a standard for CACs would result in the following percentage decreases in energy consumption:

Level 1—15.73
Level 2—19.29
Level 3—22.57
Level 4—26.27⁹⁴

Thus, energy efficiency standards for CACs set at levels 2, 3 or 4 meet DOE's test of significant energy savings. However, as discussed above, the energy savings may be either higher or lower than the savings projected by the ORNL model.

In addition, the absolute energy savings attributable to CACs could be further reduced if DOE found that the usage elasticities used in the ORNL model were much greater than anticipated. The Model currently assumes that consumers will use CACs slightly more, as efficiencies for CACs increase.⁹⁴ However, some studies indicate that consumers might greatly increase their usage of CACs as efficiencies increase, so that any reduction in energy use attributable to higher efficiency units could be offset by this higher usage.

Moreover, the ORNL model does not fully explore the impact of higher efficiency CACs on the overall thermal integrity of a housing unit and the efficiencies of other appliances, such as furnaces, within the unit. It has been suggested that the purchase of more efficient CACs could result in lower investments in measures such as insulation or storm windows, which would improve the thermal integrity of a house, or in more efficient furnaces. If CACs did have such an impact on these investment decisions, little if any real energy would be saved by requiring a standard for CACs.

3. Economic Justification. A. Impact on Manufacturers. In the April 1982 proposal, DOE indicated that the per unit increased cost to manufacturers to meet the highest standard level of efficiency was substantial. See 47 FR 14451. As indicated above, however, DOE has altered the cost-efficiency curve in a manner that has the effect of reducing the cost to a manufacturer of

⁹⁰ Over 1 million households live in buildings with 5 or more units with a central air conditioning system for the entire building. See Housing Characteristics, 1980, DOE/EIA-0314 (1982), at Table 19.

⁹¹ DOE ran two sensitivity analyses of the ORNL Model projections of energy savings. One substituted a constant distortion rate for the algorithm; the other substituted the historical rate of increased efficiency for that derived by the ORNL Model. At level 4 the results 1.21 Quads and 0.80 Quads, respectively. Neither amounts would satisfy the first two tests of significance.

⁹² In these computations, DOE has reduced the percentage of oil used to generate electricity by 14 percent and increased the percentage of gas by 16 percent from the average of the annual percentages for the years 1990 and 1995, see note 80, *supra*, with the result that oil represents 2.26 percent and gas 7.13 percent of the projected electricity savings. These percentage changes are derived from the actual percentage deviations in 1982. See Electric Power Monthly, DOE/EIA-0226.

⁹³ Electricity used over the period 1987-1998 is estimated to be 434.1 Quads. It is derived through linear extrapolation of the estimate made for the years 1985, 1990, and 2000. U.S. Department of Energy, July 1981, "The National Energy Policy Plan," Table 1.

⁹⁴ As indicated above, DOE ran two sensitivity analyses of the level 4 savings. Under the constant distortion rate the percentage savings projected would be 26.24; under the historical trend analysis the percentage savings projected would be 16.53.

⁹⁵ The ORNL model includes a value of .2 as the usage elasticity for CACs. This means that for every unit of energy saved by more efficient equipment, .2 additional units of energy will be consumed due to increased usage.

meeting a level 4 standard compared to what was indicated in the April 1982 proposal. Nevertheless, the increased costs to manufacturers to meet level 4 would remain substantial. To meet even a level 3 standard for the most popular class, the 39,000 BTU and under split system class, as compared to the 1978 base line unit would require over \$150 per unit in increased costs to a large manufacturer of CACs. For this same class, to meet a level 2 standard, the increased cost to the manufacturer would be \$134 per unit.

The negative impacts on manufacturers projected by the FIM are smaller than might be expected from these increased costs. Thus, the FIM projects no increase in business risk attributable to standards and increased profitability for large firms as a result of standards. On the other hand, profitability over the period 1987-1991 for a medium-size firm decreases over 25 percent at level 4 and over 20 percent, at both levels 2 and 3. Similarly, profitability for small firms declines almost 30 percent over the same period at level 4 and over 20 percent at levels 2 and 3. The effect on firms' debt/equity ratio is not pronounced.

As indicated in the General Discussion section, the FIM impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments.⁹⁵ In the case of CACs the ORNL Model projects that by 1987 the SWEF will be 7.40 SEER in the base case. From the EnAD this would indicate that 16 percent of the necessary investment to achieve the highest standard level would be made as part of historically indicated investments. Thus, the FIM negative impacts actually attributable to the highest standard level should be reduced by about 16 percent. At level 3, however, the EnAD indicates that 80 percent of the necessary investment would be made as part of historically indicated investment. Consequently, the FIM impacts at this level should be reduced by 80 percent. At levels 1 and 2 the EnAD indicates that all of the necessary investment would be made as part of the historically indicated investment. Therefore, at these levels there should be virtually no negative impact on manufacturers, notwithstanding the large increase in costs.

However, some commenters stated that the FIM did not fully explore the negative impacts on manufacturers. One commenter, Bard Manufacturing Company, No. 2117, noted that several large firms have recently discontinued their CACs divisions or sold them, because of poor profitability. Bard states that the DOE analysis does not recognize the severe impacts that a standard level could produce on the air conditioning industry, arguing that some firms could be driven out of business.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated previously, would be to require certain investments to be made that might not otherwise have been made. These required investments may result in the forgoing of certain other investments which would be more beneficial to the manufacturer. Manufacturers generally supported this conclusion.

B. Impact on Consumers. At all standards levels, consumers would incur substantial increases in first costs. For example, for a split system, 39,000 BTU and under unit, the most popular class, at a level 2 standard the price increase would be \$366 or a 33 percent increase, and at level 3, the price increase would be \$414 or a 37 percent increase. For a single system, 39,000 BTU and under unit, at standard level 2 the price increase would be \$376 or a 37 percent increase, and at level 3, the price increase would be \$442 or a 44 percent increase. For a split system over 39,000 BTU unit, the price increase at a level 2 standard would be \$391 or a 20 percent increase, and at level 3, the price increase would be \$411 or a 21 percent increase. For a single system over 39,000 BTU unit, the price increase at a level 2 standard would be \$383 or a 22 percent increase, and at level 3, the price increase would be \$524 or a 30 percent increase. At standard level 4, the price increases would be even greater. As previously discussed, DOE does not have sufficient data to create a full "cost book" for this efficiency level, therefore, DOE does not have a precise estimate of the increase in prices of units at this level. Even at standard level 1, the price increases are not small. The most popular class at level 1 would increase in price by over \$319, or over 28 percent, with the prices for other classes increasing by more than \$300.

These large price increases, especially when they are not part of a life cycle cost decrease, *see infra*, are likely to have an adverse impact on all income groups. Although the income elasticity for CACs was higher than for any other product measured, it is clear that such

large price increases will result in a change in consumer buying patterns. Thus, DOE believes that because of the size of the price increase, there will be a substantial impact on consumers. Supplement, EcAD at 582-611. Nevertheless, the analysis indicates that less than 2 percent of the households with an income of over \$15,000 would forgo the purchase of CACs each year as a result of a standard set at the highest level. However, the analysis only measures direct purchases by consumers and does not measure purchases by third parties, such as builders. For purposes of the analysis, DOE determined that only 36 percent of CACs were purchased directly. *See* Supplement, EcAD, Appendix J at 584-4. Thus, there could be a substantial number of CACs that would not be purchased by builders or other third party purchasers that would not be reflected in the analysis.⁹⁶ The impact on lower income households (\$15,000 income or less) is greater, with over 7 percent of those who would have purchased CACs not purchasing them because of the increased price attributable to standard level 4. In the less than \$7,000 income range, over 14 percent would forgo CAC purchases each year. While the percentages of lower income households that would forgo CAC purchases are large, the absolute number of households so impacted are small (i.e., 5843 lower income households per year would forgo CAC purchases), since lower income households are the least likely to purchase CACs in any case.⁹⁷

On the other hand, households that rent their housing will probably not purchase CACs in any event and must accept the equipment provided by the landlord. DOE believes that with respect to lower income households, landlords are most likely to provide the least expensive CAC, if any, and hence the least efficient. If such a landlord were to purchase a more expensive CAC, as a result of standards, DOE believes that the landlord will probably recover any increased costs through higher rents or through diminished services. DOE does not have data as to the number of households in this situation—lower income renters with CACs potentially subject to standards whose electricity bills are not paid by the landlord. As to

⁹⁵ This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product) prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

⁹⁶ This analysis only measured the impact of a standard set at level 4. Standards set at level 2 or 3 would necessarily have smaller impacts under this analysis.

⁹⁷ Only about 14 percent of the lower income households have CACs. *See* Housing Characteristics, 1980, DOE/EIA-0314 (June 1982), at Figure 9.

these households, however, DOE believes energy efficiency standards would have no positive impact.

Considering the burdens and benefits of possible standards for CACs to all consumers and lower income persons, DOE concludes that the effects of a standard would be somewhat negative because of the substantial increase in first cost to all consumers and the possible foregone purchases of CACs by lower income households. Moreover, since DOE's analysis does not review the 64 percent of all CACs purchased by third parties, it is likely that the large increase in first cost could alter the buying patterns of third party purchasers to the detriment of the ultimate user of the units.

C. Life Cycle Cost. As indicated above, DOE has made three changes to the cost/efficiency curves for CACs that affect the life cycle cost. The first and most significant was the change in the capacity and usage of the average CAC; reducing substantially the life cycle cost minimum for CACs in the ORNL Model.⁹⁹ Also, DOE added a new point on the cost-efficiency curves, representing more advanced technology than was reflected in the April 1982 proposal, and deleted the previous highest efficiency design option in the EnAD, on the basis of comments on the proposal independently and together, these two changes reduce the cost of more efficient CACs on the cost-efficiency curve and consequently reduce the life cycle costs of the most efficient CACs. They are not reduced enough, however, to become life cycle cost minima.

For the product as a whole, the life cycle cost minimum is below all the standard levels analyzed. For two classes of CACs representing almost 75 percent of the market, their life cycle cost minima are likewise well below all standards levels. For the class of large split systems, the life cycle cost minimum is below only the level 4 standard. For the class of large single package systems, the life cycle cost minimum is below both levels 3 and 4.

⁹⁹The ORNL Model determines energy consumption by product, not by product class. Therefore, the cost-efficiency curves reflected in the cost-efficiency data in the EnAD for the product classes are first recreated into a cost-efficiency curve for the product as a whole. A life cycle cost curve, including the life cycle cost minimum, for the product as a whole can then be determined. The Life Cycle Cost Analysis, however, treats each class of product separately. For CACs, this results in four life cycle cost curves and four life cycle cost minima. For two classes, representing almost 75 percent of the market, the life cycle cost minima are below all standards levels. For the remaining two classes, the life cycle cost minima are only below a level 4 standard.

This indicates that any standard for CACs at level 2 would prohibit the manufacture and sale of the most cost-effective model of CAC to an average consumer in the classes making up 75 percent of the national market. Moreover, a standard at level 4 would prohibit the most cost-effective model of CAC to the average consumer in every class of CAC. Finally, at level 3, a standard would prohibit the most cost-effective model of CAC to the average consumer in three of the four classes, making up 84 percent of the market.

In the April 1982 proposal, DOE indicated that it would consider it to be a significant burden of a standard if the standard prohibited from the market the average consumer's most cost-effective model of an appliance. As indicated in the General Discussion, no commenter disagreed with assigning such a burden to a standard that had such an effect.

Prohibiting the life cycle cost minimum for an appliance denies the freedom to the consumer to purchase the product that is most cost-effective. However, even when consumers have the freedom to make such a choice, they do not always do so. As discussed in the General Discussion section, there is always some market distortion such that the efficiency of the average purchase falls short of the life cycle cost minimum. Thus, it is possible to prohibit the most cost-effective model of an appliance and yet at the same time reduce the average life cycle cost for appliances of that type. That is, a standard may result in a life cycle cost for the appliance that is higher than necessary but still less than the life cycle cost of the average product in the market. On the other hand, a standard not only may prohibit the most cost-effective model of an appliance but also actually increase the average consumer's life cycle cost. In the April 1982 proposal, DOE indicated that it would consider it a substantial burden of a standard if it had the effect of actually increasing consumers' life cycle costs. No commenter contested this position.

The comparison of life cycle costs at the various standard levels to the life cycle cost of a central air conditioner at the 1987 SWEF reveals that for the two classes of 39,000 BTU and under central air conditioners that make up 75 percent of the market, a standard at all central air conditioner levels actually increases the average consumer's life cycle costs. For a split system 39,000 BTU and less central air conditioners, the life cycle cost at level 1 increases by \$17, at level 2, by \$19 at level 3, by \$24, and at level 4, by \$153. For a single system 39,000

BTU and less central air conditioner, the life cycle cost at level 1 increases by \$6.00, at level 2, by \$8.00 at level 3, by \$16, and at level 4, by \$208. However, for a split system, greater than 39,000 BTU central air conditioner, the life cycle cost decreases by \$106 at level 1, by \$154 at level 2 by \$187 by level 3, and by \$131 at level 4. For a single system, greater than 39,000 BTU central air conditioner, the life cycle at level 1 decreases by \$164, at level 2 by \$215, at level 3, by \$169, and at level 4, by \$43. See EcAD Supplement, Table G-9.

Accordingly, a standard would prohibit the most cost-effective models and would raise life cycle costs for the average consumer of the most popular classes of CACs. However, it should be noted that the narrow differences between the negative financial impacts recorded at levels 1, 2 and 3, result from the almost flat nature of the life cycle cost curves for the two most popular classes of CAC until they reach very high efficiencies. Differences in life cycle costs between the various efficiencies below level 4 are therefore small. This is shown, for example, in the Supplement where the life cycle cost differences between the 1987 SWEF and levels 1, 2, and 3 are not more than \$24 for one class and not more than \$16 for the other.

Thus, it is appropriate to consider the life cycle cost effects of a standard for CACs at all levels to be a burden because a standard would penalize the average consumer, rather than benefit him. While the degree of burden increases as the amount of penalty increases, it should be noted that at level 4 the amount of the penalty is very large (between \$150 and \$200 for the classes making up 75 percent of the market).¹⁰⁰ Both the amount of the penalty and the fact of the penalty are taken into account in weighing the benefits and burdens of standards.

The regional analysis of the life cycle cost effects of a standard for CACs reflects the fact that the effects of a standard for CACs differ substantially depending upon the area involved. See Supplement.¹⁰⁰ For example, in six States the combination of climate and electricity prices results in a life cycle cost minimum above the most stringent

⁹⁹While life cycle cost penalties are measured over the life of the product (12 years for CACs), the penalties are suffered in the year of purchase in the increased purchase price of the product that is never recouped in discounted fuel price savings. Life cycle cost benefits, however, are felt only over the life of the product, as fuel price savings outweigh the increased purchase price.

¹⁰⁰The analysis in the Supplement reflects only the effects with regard to the most popular class of CAC, making up 60 percent of the market.

standard level—that is, the most cost-effective model would *not* be prohibited even at the highest standard level. On the other hand, in 23 States the most cost-effective CAC would be prohibited at even the lowest standard level, because of those States' low electricity prices, low number of cooling degree days, or a combination of both. Similarly, comparing the difference in the life cycle costs between the projected 1987 SWEF and the various standard levels, the analysis shows that States with average or below average CAC usage and below average electricity prices are generally harmed, while States with above average CAC usage and average or above average electricity prices are benefited. However, it should be noted that any benefits or burdens reflected in this analysis are based upon the average consumer's usage of CACs. To the extent that an individual consumer uses a CAC less than average, even in a State with a positive LCC, that consumer would be harmed. At level 4, 35 States are harmed, compared to 16 benefited, but at levels 1, 2, and 3, 28 States are benefited compared to 23 harmed. Moreover, as might be expected, those States that benefit generally have high levels of CAC saturation because of the hotter climate. The 16 States that benefit at level 4 account for almost half of all the CACs in the Nation. The 28 States that would be assisted by standard at levels 1, 2 or 3 account for nearly 75 percent of CACs saturation in the market.

The ORNL Model's NPV output is consistent with the life cycle cost analysis. At standards levels 3 and 4 the Model projects a negative NPV, ranging from \$85 million at level 3 to \$358 million at level 4 over the period 1987–2017. At levels 1 and 2, however, there are positive NPVs of \$153 million and \$63 million, respectively. The positive NPV at levels 1 and 2, notwithstanding the small increase in life cycle costs for the classes that make up 75 percent of the market, reflects the much larger decrease in life cycle costs for the remaining 25 percent of the market and representing the larger units. None of these amounts, however, are large in an absolute sense. For example, spread over the Nation's 80 million households the negative NPV is less than \$.15 per year per household at level 4, while the positive NPV for CACs at level 2 is only \$.08 per year per household.

The NPVs for CACs decrease as the standard requires greater efficiency. Thus, moving from a level 1 standard of efficiency (which does not save significant energy) to a level 2 standard

(which does) results in a decrease in NPV. As indicated in the April 1982 proposal, this reflects that such a mandated increase in efficiency of CACs results in an increase in the negative present values relative to the positive present values.

D. Energy Savings. As indicated above, over the 12 years of the average life of a CAC, a standard for CACs would, beginning in 1987, save between 0.76 and 1.23 Quads of electricity,¹⁰¹ which is an average of .063 to .103 Quads of electricity per year. This amount of energy on a yearly basis is not very great.

E. Lessening of Utility or Performance of Products. Concern was expressed by some commenters that standards for CACs could result in the design of CACs that do not achieve a 20 percent dehumidification. Were this true DOE would agree that this would constitute a burden attributable to standard, because dehumidification by CACs is, at least where humidity is a problem, a definite utility or performance aspect of CACs. As was indicated in the technical discussion, however, one of the reasons why DOE's highest analyzed standard level is below the efficiency claimed for some existing models in the market is because that standard level can be achieved with existing technology while retaining necessary dehumidification capabilities.

DOE is not aware of any other factor associated with a standard set at a level analyzed that might affect the performance or utility of existing CACs. However, as was discussed above, despite DOE's best efforts to assure no negative impact on performance or utility of existing products, there is no assurance that as a result of standards disincentives to investment in new performance or utility features that might reduce efficiency would lessen the utility or performance of future products. While manufacturers supported this conclusion in general, they gave no examples specific to CACs.

F. Impact of Lessening Competition. The Attorney General has determined that the absence of a Federal standard for CACs would have no impact on competition. The Attorney General did not assess the possible effect on competition attributable to a Federal

¹⁰¹ As described earlier, these figures actually overstate energy savings to the extent that the ORNL Model includes central air conditioning systems not subject to the Act, such as those systems in large buildings. DOE is not able at this time, however, to quantify the extent of this overstatement.

standard for CACs at the levels analyzed.¹⁰²

G. Need to Save Energy. Central air conditioners use electricity exclusively as their energy source. The electricity that would be saved by standards for CACs would be concentrated in certain parts of the Nation and would be concentrated during summer peak load periods. While peak load savings are generally more valuable to utilities than normal load savings, the value of the savings depends greatly on the nature of the particular utility's peak load and consequently is highly regional, if not local, in character. Thus, although savings of electricity associated with CACs are more valuable than other forms of electricity savings, the relative value of those savings depends on the load characteristics of the particular utility.

H. Other Factors. The significant negative impacts projected by the FIM on the prototypical small manufacturer of CACs were presented above. Only with respect to profitability was there any significant negative impact. Moreover, after adjusting for investments made as part of historically indicated investments, the only meaningful impact would be at level 4. In the April 1982 proposal, however, DOE indicated its belief that the methodology of the FIM would tend to understate the negative impacts of standards on small firms. No comments were received specific to small CAC manufacturers, but no commenter disputed DOE's reasons for concluding that the FIM methodology tends to understate the negative effect of standards on small manufacturers. Consequently, DOE concludes that the negative impacts projected by the FIM (as adjusted) understate the negative impact of standards on small manufacturers of CACs.

Weighing of Factors

The benefits of a standard for CACs are that it would save electricity and have a positive net present value at levels 1 and 2, while at levels 3 and 4 the benefit of a standard would be that it saves electricity. The amount of electricity saved at each of levels 2, 3, and 4 is greater over the period 1987–2005 than the electricity saved at the highest standard level for any other product. Moreover, the electricity saved is peak load electricity, generally the

¹⁰² In 1980 the Attorney General did comment on the June 1980 proposal to set Federal standards. That comment was highly critical of the analysis used and conclusions reached in that proposal, to the extent that it was said that a conclusion as to the impact on competition could not be reached.

most valuable type of electricity savings. While there are positive net present values at levels 1 and 2, they are small in magnitude.

The burdens of a standard for CACs depend on the level analyzed. At level 4 there are very significant burdens. The impacts on manufacturers, while not overwhelming, are negative for small and medium-size manufacturers. The negative life cycle cost impacts, moreover, are substantial—eliminating from the market place the most cost-effective CAC to the average consumer in all four product classes and raising the life cycle cost to the average consumer by large amounts in the two classes that make up 75 percent of the market. The net present value analysis reflects these impacts with the largest negative net present value of any product or class under any analyzed standard level. Accordingly, the negative impact on consumers at level 4 creates a substantial burden. In addition, on a regional basis, standards would have a negative impact on 35 States. Finally, to these quantified burdens must be added the small, additional unquantified burdens reflected in the discussion. Weighing the benefits of the 1.23 Quads of electricity savings, much of which is peak load savings, against all these burdens, DOE concludes that a standard set at level 4 would not be economically justified.

At level 3, while the electricity savings are less, so also are the burdens. The quantified negative impacts set forth in the FIM on small and medium-size manufacturers are quite small. However, a standard set at this level could drive some manufacturers out of business. Such a result could be potentially anti-competitive. Although the increase in life cycle cost for the two most popular classes is reduced by over 90 percent, the most cost-effective models of CACs in three classes are eliminated from the market place. The net present value is also negative. The increase in first cost to consumers is over \$400 for all classes of CACs. Thus, this combined negative impact on consumers creates a substantial burden. Moreover, on a regional basis, standards would have a negative impact on 23 States. Finally, to these quantified burdens must be added the small, additional unquantified burdens reflected in the discussion. Weighing the benefits of 1.07 Quads of electricity savings, much of which is peak load savings, against these burdens, DOE concludes that the burdens outweigh the benefits.¹⁰³

¹⁰³ Since the 1.07 Quads includes savings attributable to a possible overestimation of the

At level 2, the electricity savings are reduced to 0.92 Quads, and the burdens are somewhat less. Notably, the negative impacts predicted by the FIM on manufacturers small to begin with, are totally eliminated. However, there is always the possibility that some manufacturers could be driven out of business by a standard set even at this level. This result could potentially be anti-competitive. The negative life cycle cost impacts are again reduced, although the two smallest classes of CACs which represent almost 75 percent of the market, have life cycle cost minima which are below level 2. The net present value for the product as a whole becomes a positive number however, (albeit a number so small as to be within the error range) and the NPV therefore becomes a small benefit. The increase in first cost to consumers ranges from \$366 to \$391, depending on the class of CAC. When all of these consumer impacts are considered, however, it is clear that the small positive NPV cannot outweigh the negative LCC results and the large increase in first costs. Accordingly, DOE has determined that these negative impacts on consumers constitute an appreciable burden. Finally, to these quantified burdens must be added the small, additional unquantified burdens reflected in the discussion. Weighing the benefits of electricity savings of 0.92 Quads, much of which is peak load savings, against the burdens at a level 2 standard, DOE concludes that the burdens of a standard at level 2 outweigh the benefits and that a standard set at level 2 is not economically justified.¹⁰⁴

At level 1, the electricity savings are still less and do not meet any of DOE's tests of significance, and the net present value is slightly more positive. The life cycle cost burdens, however, remain virtually the same as level 2. While these burdens are not great, neither at this level are the savings. Consequently, DOE concludes that the burdens of a standard at level 1 outweigh the benefits.

Accordingly, because of the significant negative impacts on consumers at all standard levels as well as negative impacts on some manufacturers, DOE has determined that the economic burdens of any energy

number of CACs, and real income growth, as well as a possible underestimation of increased usage as a result of increased efficiencies, any reduction of the savings figure would tend to tip the balance further in favor of the burdens outweighing the benefits.

¹⁰⁴ The 0.92 Quads is subject to the same reductions in savings discussed *supra* in note 103. Such reductions in savings would further tend to tip the balance in favor of the burdens outweighing the benefits.

efficiency standard for CACs clearly outweigh the small benefits attributable to saving energy.

g. Home Heating Equipment (Not Including Furnaces)

The Department of Energy is not proposing a rule with respect to the product home heating equipment (not including furnaces) (hereafter referred to as "home heating equipment"). At the present time, there is no test procedure applicable to unvented oil or gas home heating equipment. Thus, a standard would be precluded for this class, even though it probably is the largest growing class in the product type. Moreover, it does not appear likely that it would be technologically feasible to improve the efficiency of electric resistance home heating equipment for the same reasons described with respect to electric furnaces, see *infra*. Finally, DOE is proposing major modifications to the existing test procedures relating to vented home heating equipment in light of the burden on manufacturers, as well as concerns raised with respect to the failure of the existing procedure to measure the effects of thermal stack dampers and modulating controls on energy efficiency.

In light of the above, DOE believes it would be premature to propose any rule at the present time with regard to home heating equipment.

IV. Preemption of State Regulations

On December 22, 1982, DOE published a final rule with respect to the procedures by which States may obtain exemptions for State or local efficiency standards that are statutorily preempted and by which manufacturers may obtain preemption of a State or local efficiency standard for which there is no Federal final rule. 47 FR 57198, 57213. DOE also established a rule for determining the effective dates of a final Federal standard or no-standard determination, upon which supersession of State and local standards would take place. The rule stated that a Federal standard or no-standard determination would be effective in a State 180 days after publication of the Federal standard or determination in the Federal Register, unless the State had filed a notice of petition within 60 days and a petition for a rule to exempt its State or local standard within 120 days of publication. If a State filed such a notice and petition, the State standard would not be superseded until DOE had denied the requested rule, but in no event sooner than 180 days after publication of the standard. Thus, no hiatus would occur—when a State or local standard would

not be in effect—if the State obtained an exemption.

The final rule adopted today determines that an energy efficiency standard for refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, or furnaces would not result in a significant conservation of energy or be economically justified, and that an energy efficiency standard for CAC's would not be economically justified. Thus, any State or local appliance efficiency standard with respect to these products is preempted on the effective date of this rule unless a State files a notice of petition for a rulemaking within the 60 days and the petition within 120 days.

Since publication of the December 1982 rule, DOE has received several questions concerning the timing of preemption in a State, the requirements for submittal of petitions for exempting a State standard from preemption, and the criteria to be used by DOE to evaluate the petitions.

The California Energy Commission (CEC) specifically requested clarification of Section 430.34(b) which provides that the final effective date for the rule may be:

With respect to a covered product in a particular State for which that State has filed a notice of petition within 60 days of publication of that standard in the Federal Register, and a petition under section 327(b)(3) of the Act within 120 days of publication of that standard in the Federal Register, the date upon which the Secretary issues or denies a final rule concerning that petition.

The CEC asserts that because the Secretary's determination with respect to a particular petition is a rule under section 327(b)(3) of the Act, it cannot be effective upon publication of the rule, but instead can only be effective by a date at least 30 days after publication of the rule. 5 U.S.C. 553(d). Thus, there would be a 30 day hiatus during which the Federal standard or no-standard determination would apply in the State and preempt the State standard, before a rule granting an exemption from preemption would take effect.

The CEC's comment has substantial merit. DOE, in promulgating § 430.34(b) did not intend for such a hiatus to occur. Indeed, such a hiatus would directly contravene the purposes of § 430.34(b). In order to clarify DOE's intent, DOE is amending § 430.34(b) to provide:

With respect to a covered product in a particular State for which that State has filed a notice of petition within 60 days of publication of that standard in the Federal Register, and a petition under section 327(b)(3) of the Act within 120 days of

publication of that standard in the Federal Register, 30 days from the date upon which the issuance or denial of the final rule concerning that petition is published in the Federal Register.

This minor amendment makes clear that the effective date of a final energy efficiency standard for which a State files a timely petition occurs 30 days from publication of that rule in the Federal Register.

The National Conference of States on Building Codes and Standards, Inc. (NCSBCS) expressed confusion over who may submit petitions for exemption of State rules from preemption. In order to simplify the current procedure which requires each State to submit separate petitions for each covered product, NCSBCS suggests a "class action" filing by NCSBCS on behalf of each concerned State that has adopted ASHRAE Standard 90A-1980 for particular products and that wishes to participate in the action. NCSBCS argues that this approach would be less burdensome on both the States and DOE.

Although DOE agrees that the NCSBCS approach would certainly be less burdensome, the Act prohibits the type of "class action" submission that NCSBCS envisions. Section 327(b)(3) of the Act only permits States to submit petitions for exemption from preemption. Moreover, a separate determination must be made by DOE with respect to each petition. This is not to say, however, that DOE cannot consider a number of petitions in one proceeding. Indeed, DOE expects to proceed in such a fashion. Except for the minimal filing requirements with respect to each State's petition, see 10 CFR 430.44(b), a State may, if it wishes, rely on NCSBCS or other persons or organizations to submit data or arguments in the rulemaking proceeding in support of the State's petition. Like any other rulemaking, DOE will make its decision on States' petitions, applying the statutory tests, only after full consideration of the rulemaking record.

DOE has also received comments concerning the criteria used by the Secretary for reaching a determination of the State petitions. As DOE discussed at length in the December 1982 rulemaking, DOE will evaluate the petitions based upon the language of the statute at Section 327(b)(3). 47 FR-57213-4. Thus, DOE will grant an exemption to a State if the State standard is more stringent than the DOE standard, and there is a significant State or local interest to justify the regulation, unless DOE finds that the State standard unduly burdens interstate commerce.

For a fuller discussion of the Department's views, and the type of

State and local law that would be subject to supersession, see 47 FR 57213.

DOE has incorporated into the final rule a minor technical change concerning the filing requirements for petitions. In § 430.42, the address specified for filing petitions has been changed to read as follows: "U.S. Department of Energy, Section 327 Petition—Energy Efficiency Program for Consumer Products, Assistant Secretary for Conservation and Renewable Energy, Mail Station, CE-1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585."

V. Procedural Matters

a. Environmental Issues

The 1980 environmental assessment (EA) for the then proposed energy efficiency standards estimated that the energy savings resulting from national standards for eight appliances would be within the range of 0.8 to 1.6 quads per year. The EA then analyzed the environmental impacts of this change in energy use. Based on this EA, a finding of no significant impact was issued concluding that this level of change of energy usage would not significantly affect the quality of the human environment (June 30, 1980 45 FR 44086). In neither the June 1980 proposal nor the April 1982 proposal was any comment received disputing the conclusion that a 1.6 Quads per year change in energy usage would not have a significant impact on the environment.

The NRDC, in commenting upon the April 1982 proposal, however, criticized DOE's reliance upon the June 1980 EA for its determination that the April 1982 proposal would not have significant environmental impacts since the June 1980 EA did not address the impact of a Federal no-standard standard preempting existing State standards. NRDC alleged that the effect of such preemption would be to increase energy usage compared to the *status quo ante* of no Federal standard but the existence of State standards.

Initially, DOE believes that the NRDC's comment is not well-founded. As indicated in the December 1982 final rule, while a Federal no-standard standard would preempt State standards in the absence of an exemption for the State standards, DOE's review of existing State standards makes it appear highly likely that the exemptions would be granted. Both the expressed interest of several States in their standards and the notices of petition for exemption filed with respect to the December 1982 final rule indicate that States will in fact seek

exemptions. Consequently, the circumstance NRDC suggests should be analyzed—the elimination of all existing State standards—would appear to be an exceptionally improbable situation.

Nevertheless, DOE has analyzed the impact of such an improbable situation. First, a "worst case" analysis was constructed. Under this "worst case" it was assumed that all States have standards as strict as California's. This, of course, is factually incorrect, however, since California has, with respect to all products, the strictest and most pervasive appliance efficiency standards of any State. It was also assumed that all efficiency improvements that have been achieved while these standards have been in place would be abandoned by manufacturers and consumers, and that manufacturers at considerable investment expense would retool to make less efficient equipment than they are currently making. Such an assumption strains credulity and is directly contrary to a determination made by DOE on the record of the rulemaking that energy efficiency improvements have primarily resulted from increased energy prices, not State standards.

From these assumptions DOE took California's claimed energy savings attributable to its standards, which were criticized by some commenters in this rulemaking as unrealistically high, and determined per-capita energy savings in California. These per-capita energy savings were then applied nationwide. This results in a "worst case" of a no-standard determination, eliminating all State standards, causing an increase in energy use of 0.95 Quads per year for all appliances from what would be used with State standards. This 0.95 Quads impact per year is substantially less than the maximum of 1.6 quads per year that DOE had previously determined to result in insignificant impacts on the quality of the human environment. Thus, DOE has concluded that the April 1982 proposal even under the most extreme unrealistic worst case analysis would clearly not result in significant environmental impacts so that neither an EA nor EIS are required.

DOE also attempted to make a more realistic appraisal of potential environmental impacts if all State standards were eliminated, a situation DOE believes to be highly improbable, as discussed above. In this appraisal, actual individual State standards were used instead of California's. For the products central air conditioners, room air conditioners, gas furnaces, and water heaters, all sales subject to standards

were assumed to be made at the standard level.¹⁰⁰ Using the national average SWEF projected by the ORNL Model in the base case, plus the SWEF for all sales subject to standards, DOE calculated a SWEF of sales not subject to standards. This SWEF is then applied nationwide for all sales of the four products to determine energy usage if all State standards were preempted. Under the methodology, elimination of State standards would have the following effects:

central air conditioners—a total of 1.22

Quads over the period 1984–2059
room air conditioners—a total of 3.88

Quads over the period 1984–2146
gas water heaters—a total of 0.407

Quads over the period 1984–2018
electric water heaters—a total of 0.321

Quads over the period 1984–2021
gas furnaces—a total of 0.001 Quads
over the period 1984–2011

For freezers, refrigerators, and oil furnaces there are hardly any models in commerce that do not satisfy existing State standards, and there is no increased use of energy that would occur as a result of the elimination of State standards.

A copy of this analysis, including the methodology, is available for inspection at the DOE Freedom of Information Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585, between the hours at 8 a.m. and 4:00 p.m., Monday through Friday.

Again, for the reasons explained earlier in the preamble and this section, DOE does not believe that a no-standard determination would result in any increase in any energy usage compared to the base case. The figures derived here assume total elimination of State standards with no exemptions and assume that manufacturers and consumers abandon the efficiencies that already are in the marketplace, both of which assumptions are unrealistic.

Based upon the findings of the EA and subsequent analysis, it has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and therefore an environmental impact statement is not required by NEPA and the applicable DOE guidelines for compliance with NEPA.

¹⁰⁰ If sales, in fact, were above the standard level, then the standard was not responsible for that efficiency level. Moreover, DOE is making no determination with respect to central air conditioners in this final rule.

b. Executive Order 12291

Executive Order 12291 requires agencies to determine if a rule is a "major rule" under the Order. In the April 1982 proposal, DOE determined that the rule proposed there would not be a major rule because, if adopted, it would not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion was not criticized in the rulemaking proceeding. The rule adopted today is a part of the rule proposed on April 1982 and, accordingly, would likewise not be a major rule under the Executive Order. Consequently, this rule has been reviewed by OMB under the procedures applicable to rules other than major rules.

c. Regulatory Flexibility

In the April 1982 proposal DOE certified, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities. While the April 1982 proposal received comment from small businesses involved in the manufacture of appliances, generally supportive of the proposal, the commenters did not take issue with DOE's certification. Accordingly, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., August 25, 1983.

Joseph J. Tribble,
Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. Section 430.32 is revised to read as follows:

§ 430.32 Final energy efficiency standards.

The final energy efficiency standards for each class of covered products are:

- (a) *Refrigerators and refrigerator-freezers.* No standard for all classes.
- (b) *Freezers.* No standard for all classes.
- (c) *Dishwashers.* [Reserved]
- (d) *Clothes dryers.* No standard for all classes.
- (e) *Water heaters.* (1) For the classes gas, electric, electric table top, and oil. No standard;
- (2) For the class heat pump water heater. [Reserved]
- (f) *Room air conditioners.* No standard of all classes.
- (g) *Home heating equipment, not including furnaces.* [Reserved]
- (h) *Television sets.* [Reserved]
- (i) *Kitchen ranges and ovens.* No standard for all classes.
- (j) *Clothes washers.* [Reserved]
- (k) *Humidifiers and dehumidifiers.* [Reserved]

(l) *Central air conditioners.*—(1) For the classes which include all split systems and single package units which do not operate with a heat pump. No standard for all classes;

(2) For the classes which operate with a heat pump. [Reserved]

(m) *Furnaces.* No standard for all classes.

2. Section 430.34 is revised to read as follows:

§ 430.34 Effective date.

The effective date of a final energy efficiency standard (including a determination of no standard) in § 430.32 shall be the later of:

- (a) 180 days after publication of that standard in the **Federal Register**, or
- (b) With respect to a covered product in a particular State for which that State has filed a notice of petition within 60 days of publication of that standard in the **Federal Register**, and a petition under section 327(b)(3) of the Act within 120 days of publication of that standard

in the **Federal Register**, 30 days from the date upon which the issuance or denial of the final rule concerning that petition is published in the **Federal Register**.

3. Section 430.42(a) is revised to read as follows:

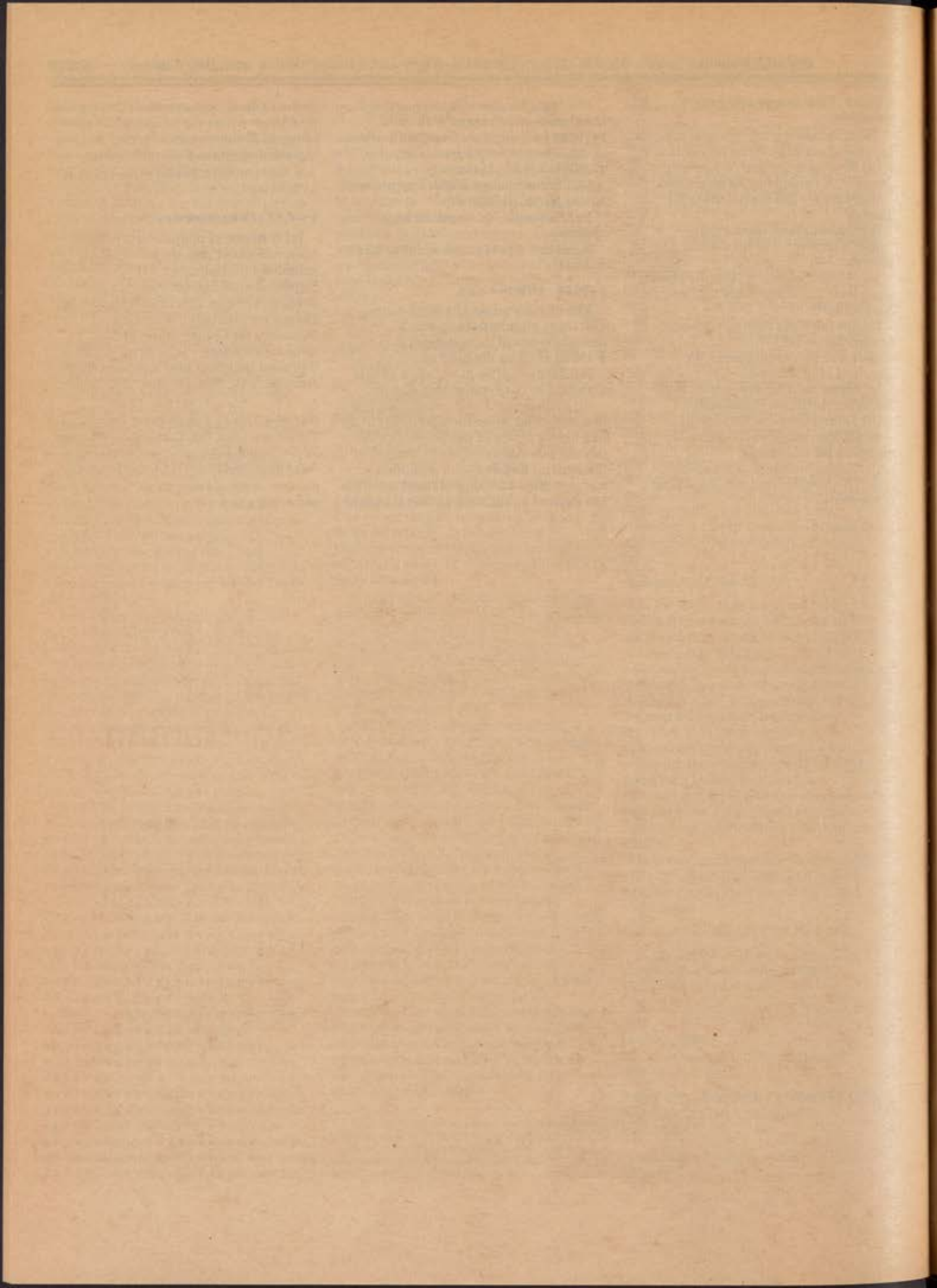
§ 430.42 Filing requirements.

(a) A notice of petition or a petition for a rule under this section shall be submitted in triplicate to: U.S. Department of Energy, "Section 327 Petition—Energy Efficiency Program for Consumer Products," Assistant Secretary for Conservation and Renewable Energy, Mail Station, CE-1, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

(Part B of Title III, Energy Policy and Conservation Act, Pub. L. 94-163, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, (42 U.S.C. 2691 et seq.))

[FR Doc. 83-23787 Filed 8-29-83; 8:45 am]

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Federal Register

**Tuesday
August 30, 1983**

Part V

Department of Health and Human Services

Health Care Financing Administration

**Medicare Program; Limitations on
Reimbursable Hospital Costs and the
Rate of Hospital Cost Increases; Final
Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Limitations on Reimbursable Hospital Costs and the Rate of Hospital Cost Increases

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rules.

SUMMARY: These rule revise and establish as final rules the interim rules published September 30, 1982 (47 FR 43282) implementing section 101 of the Tax Equity and Fiscal Responsibility Act of 1982. These rules make exceptions available to hospitals consistent with the new cost limits (published elsewhere in this issue of the *Federal Register*), specifically exempt from those cost limits rural hospitals with less than 50 beds in existence as of the enactment of the law, and establish a ceiling on the allowable annual rate of increase in operating costs per case for inpatient hospital services. The rate of increase ceiling takes the form of a target amount of cost per case against which a hospital's incurred cost per case will be compared, and includes incentives for hospitals to keep their cost increases below the target rate.

EFFECTIVE DATE: These rules are effective for hospital cost reporting periods beginning on or after October 1, 1982.

FOR FURTHER INFORMATION, CONTACT: Marilyn Koch, (301) 594-9344.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative History

Section 223 of the Social Security Amendments of 1972 (Pub. L. 92-603, enacted October 30, 1972), amended section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x (v)(1)), to authorize the Secretary to set prospective limits on the costs that are reimbursed under Medicare. These limits (commonly called section 223 cost limits) may be applied to direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider, and may be based on estimates of the costs necessary in the efficient delivery of needed health services. Regulations implementing this authority are set forth at 42 CFR 405.460. Under this authority, we have published section 223 limits on hospital inpatient general routine per diem costs annually since 1974.

On September 3, 1982, the President signed into law the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA: Pub. L. 97-248). Section 101 of this legislation added a new section 1886 of the Social Security Act, supplementing section 1861(v) of the Act by providing for "further limitations on reasonable cost and determination of payment amounts for operating costs of inpatient hospital services . . ." (Section 101(d) of Pub. L. 97-248). These provisions are intended to restrain the growth of hospital costs and to relieve the stress that increases in these costs put on the financial soundness of the Hospital Insurance Trust Fund.

(Section 1886 was subsequently amended by The Social Security Amendments of 1983, Pub. L. 98-21, enacted April 20, 1983. The primary change made by these amendments is to establish a prospective payment system for inpatient hospital services effective for hospital cost reporting periods beginning on or after October 1, 1983. However, Pub. L. 98-21 also amended the limitations on reasonable cost reimbursement established by section 101 of TEFRA. As a result, the final regulations set forth in this document must be further amended to conform to Pub. L. 98-21. Those amendments will be included in the interim final rules implementing the prospective payment system. However, hospital cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983 will still be subject to the rules implementing section 101 TEFRA that were published September 30, 1982 (47 FR 43282), as modified and affirmed by these final rules.)

Section 1886(a) provides for expanding the existing "section 223" limits, which previously applied on a per diem basis only to the inpatient routine operating costs hospitals incur in providing routine services (primarily room, board, and routine nursing services). The expanded limits apply on a per case basis to the operating costs of ancillary services, such as radiology and laboratory services, and the operating costs of special care services, such as intensive or coronary care, as well as operating costs of routine services. Section 1886(a)(1)(B) requires these limits to be adjusted to account for differences between hospitals in the types of cases treated (case-mix).

Section 1886(b) provides for a control on hospital cost increases that is separate and different from the type of limit established under section 223. This provision requires that we establish a ceiling target level for the allowable rate of increase of hospitals' inpatient operating costs per case, and provides

for both incentive payments for hospitals that keep their cost below the target, and a reduction in the amount of reimbursement for hospitals that incur costs greater than the target.

Section 101(b)(1) of Pub. L. 97-248 made sections 1886 (a) and (b) effective for cost reporting periods beginning on or after October 1, 1982. Section 101(b)(2)(A) provided that, in order to ensure the prompt implementation of these provisions, regulations needed to implement them could be issued as final regulations (on an interim or other basis) without prior notice and comment. Section 101(b)(2)(B) exempts, until January 1, 1984, these necessary regulations from Office of Management and Budget (OMB) review of information collection requirements, as required under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

On September 30, 1982 we published interim final regulations (47 FR 43282), and a notice setting forth the new schedule of cost limits (47 FR 43296), that together implemented sections 1886 (a) and (b) for hospital cost reporting periods beginning on or after October 1, 1982. Each of these documents had a 60-day comment period, ending November 29, 1982. During that period, we received approximately 100 comments on both the regulations and the cost limits notice.

We have analyzed these comments and continued to analyze section 1886, the interim regulations, and the problems involved in implementing case-mix adjusted cost limits and the new target rate ceiling on hospital cost increases. In addition, after enactment of Pub. L. 98-21, we analyzed those amendments to section 1886 and the interactions between these rules and the regulations necessary to implement the prospective payment system. As a result, we have decided to make certain changes and refinements in the interim regulations. This document sets forth our analysis of public comments and our responses to those comments, explains our resulting decisions on the interim regulations, and amends those regulations appropriately. A separate document, published as a notice elsewhere in this issue of the *Federal Register*, similarly discusses comments, responses, and changes in the case-mix adjusted cost limits.

B. Provisions of the Interim Final Regulations

1. General purpose

The interim regulations implemented section 1886(a) by making changes to 42 CFR 405.460. "Limitations on

reimbursable costs", needed to make exceptions available to hospitals consistent with the new case-mix adjusted cost limits. The amended regulations specified, in § 405.460(e)(5), that the exception to the hospital cost limits based on intensity of routine care would be available only for cost reporting periods in which hospitals were subject to routine per diem costs limits. The regulations, in § 405.460(e)(9), also provided an exception to the case-mix adjusted hospital cost limits if a hospital can show that it has taken certain actions that have substantially altered its mix of patients treated. These changes were immediately effective for cost reporting periods beginning on or after October 1, 1982.

The interim regulations implemented section 1886(b) by establishing a new section 42 CFR 405.463, entitled "Limitations on Rate of Cost Increase". These regulations specified how the statutorily prescribed target rates would be applied, and provided for appropriate exemptions, exceptions, and adjustments. These regulations were immediately effective for cost reporting periods beginning on or after October 1, 1982, and before October 1, 1985.

(We wish to point out here that Pub. L. 98-21 specifically amended the cost reporting periods for which sections 1886(a) and (b) will apply. Whereas cost limits on total inpatient operating costs under section 1886(a) originally were represented as annual limits continuing indefinitely into the future, section 601(a)(1) of Pub. L. 98-21 provides that such limits shall not apply to cost reporting periods beginning on or after October 1, 1983. On the other hand, the rate of increase limit established under section 1886(b) will now continue indefinitely in accordance with the amendment of section 1886(b) by section 601(b)(4) of Pub. L. 98-21. However, whereas, under TEFRA, the rate of increase limit applies to nearly all hospitals participating in Medicare, effective for cost reporting periods beginning October 1, 1983, it will apply only to hospitals excluded from the prospective payment system and reimbursed on a reasonable cost basis for inpatient hospital services.)

2. Interim Rules on Limitations on Reimbursable Costs (42 CFR 405.460)

As noted above, the hospital cost limits effective for cost reporting periods beginning before October 1, 1982, applied only to inpatient general routine operating costs, which generally include primarily the operating costs hospitals incur to furnish room, board, and routine nursing services. Those limits did not apply to the costs of ancillary services

(for example, radiology or laboratory services), and special care units, such as intensive or coronary care units. Those limits also excluded capital-related costs (that is, costs classified in the depreciation accounts on a hospital's Medicare cost report), malpractice insurance costs, and costs a hospital allocated to the interns and residents (in approved programs) or nursing school cost centers on its Medicare cost report. Those limits, like those in previous cost limit schedules, were applied on a per diem basis and did not include an explicit adjustment for differences in inpatient routine costs that result from variations in the type and mix of cases treated by various hospitals (that is, case mix differences).

However, in accordance with section 1886(a) of the Act, we implemented a new system of limits on hospital inpatient operating costs for cost reporting periods beginning on or after October 1, 1982. As noted above, the schedule setting forth these limits was described in detail in a notice published in the Federal Register on September 30, 1982 separately from the interim regulations implementing section 1886.

The new limits differed in three major ways from previous limits. First, we applied the new hospital cost limits to total inpatient operating costs, including not only inpatient operating costs of general routine services, but also inpatient operating costs of ancillary services and operating costs with respect to inpatient hospital services of special care units such as intensive or coronary care units. This greatly increases the effectiveness of the limits in preventing payment of costs due to inefficiency, since the limits apply to a much larger percentage of all hospital costs.

Second, we now adjust each hospital's limit to reflect its case mix. This adjustment is needed to account for differences in cost that result from differences in the type and mix of patients treated by various hospitals. This adjustment results in more accurate limits, since it enables us to distinguish cost differences that result from variations in case mix from those that result from differences in efficiency. (Because of certain characteristics of the data we use to develop the Medicare case-mix index, we excluded children's hospitals and long-term care hospitals from application of the new limits.)

In addition, as required by the new law, the limits are applied on a per case rather than per diem basis. (To determine a hospital's number of Medicare cases, we use the number of Medicare discharges it reports in each

period.) Each hospital's cost per Medicare discharge is limited to a specified amount, regardless of the number of days of care furnished to individual Medicare patients. We believe that cost per discharge is a more accurate measurement of inpatient operating costs than cost per diem, and that applying the limits on a per discharge basis gives hospitals more flexibility to find an efficient balance between intensity of services and lengths of stay. In addition, we expect this approach will alleviate the problems experienced under the previous system by hospitals with high per diem costs put shorter-than-average length of stay. Because these problems will not arise under our proposed system, we decided not to apply an adjustment to the case-mix limits for hospitals in States with below-average Medicare utilization. (Such an adjustment has been available to hospitals subject to the routine per diem cost limits.)

As required by section 1886(a)(1)(c), the notice setting forth the new limits also described (on page 43283, column 1) a "hold harmless" provision under which a hospital's limit on allowable operating costs of inpatient hospital services will not be lower than its allowable operating costs of inpatient hospital services in the hospital's reporting period before application of the new limits.

The new system of limits retains several features of the earlier system. Like the per diem limits, the case-mix adjusted limits exclude certain costs (i.e., capital-related costs, malpractice insurance costs, and certain education costs) that can vary for reasons unrelated to efficiency. We also continue use of an adjustment to account for inflation. The amount of this inflation adjustment for each cost reporting period subject to the new limits is set by the new legislation at a "market basket" rate (reflecting the estimated increase in hospital costs compared to the period preceding the application of the limit) plus one percentage point. (The legislation also requires that the data used in computing the limits be updated to the year preceding the year in which the limit is applied. This is done by using the estimated average rate of change of hospital costs industry-wide.) In addition, we continue to use a wage index to account for cost variations due to area wage differences and retain the current adjustment for cost differences due to variations in the level of intern and resident teaching activity.

To make our regulations at 42 CFR 405.460 consistent with section 1886(a) of the Social Security Act, and with the methodology and scope of the new hospital cost limits, it was necessary to make certain changes in those regulations. However, most provisions of those regulations were not inconsistent with the new cost limits established under section 1886(a), and continue to remain in effect under section 1886(a). Thus, provisions at 42 CFR 405.460(e) for exempting sole community hospitals, new providers, and risk-basis health maintenance organizations from the section 223 cost limits remain in effect. Similarly, provisions at § 405.460(f) for allowing a hospital to have its cost limit adjusted upwards on an exception basis due to allowable costs attributable to atypical services, extraordinary circumstances, fluctuating population, medical and paramedical education, and unusual labor costs remain in effect. The provision also remains in effect under which an exception is provided where a hospital providing essential community hospital services would be rendered insolvent through application of the limits.

The amendments made to § 405.460 by the interim rules were relatively few, but significant. As required by section 1886(a)(3), we provided an exemption from the case-mix adjusted limits for rural hospitals in operation with less than 50 beds as of the date of enactment of the new law, September 3, 1982. We amended the existing exception in § 405.460(f)(5) for costs related to more intensive routine care to specify it would be available only for hospital cost reporting periods subject to the per diem routine cost limits. We established a new exception in § 405.460(f)(9) that permits a recalculation of a hospital's case-mix index if the hospital experiences a significant and abrupt change of case mix because it adds or discontinues services. This new exception was not specifically required by statute, but is necessary to prevent inequity to hospitals. (Such exceptions are authorized by section 1886(a)(2) of the Act.) We also made provision in § 405.460(h) for adjustments to the amount of a hospital's inpatient operating costs to take into account factors which could result in significant distortion of those costs. For example, we could make such an adjustment to reduce a hospital's otherwise applicable cost limit to account for lowered operating costs resulting from discontinuation of inpatient hospital services that a hospital previously

furnished and that are customarily furnished directly by similar hospitals.

3. Interim Rules Establishing a Rate of Increase Control (42 CFR 405.463)

The interim regulations established a target rate percentage system to be applied to restrict the rates of increase of total inpatient operating costs per case for hospital cost reporting periods beginning on or after October 1, 1982 and before October 1, 1985. (The dates of application will be amended in the interim final rules, soon to be published, implementing Pub. L. 98-21.) The target rate percentage equals the market basket index plus one percentage point. In the first year, this target rate percentage will be applied to each hospital's allowable inpatient operating cost per discharge for its immediately preceding cost reporting period. In the case of a hospital whose first reporting period subject to the rate-of-increase control begins October 1, 1982, the target rate percentage would be applied to the inpatient operating cost per discharge for the period beginning October 1, 1981. The resulting amount will be that hospital's target amount for inpatient operating cost per discharge in the first cost reporting period subject to this provision. In each of the subsequent two reporting periods, the target amount will be computed by applying the applicable target rate percentage to the previous period's target amount.

If a hospital's costs in a subject cost reporting period are below its target amount, we will pay the hospital its actual costs per case plus the lower of 50 percent of the difference between the hospital's cost per case and the target amount, or 5 percent of the target amount. If a hospital's cost in a subject period is higher than its target amount, we will pay, in the first two years, the target amount plus 25 percent of the excess costs, and, in the third year, the target amount. In no case will a hospital be reimbursed an amount greater than the applicable cost limit on total inpatient operating costs.

Section 1886(b)(4) gives the Secretary authority to establish exemptions from our exceptions to the rate of increase ceiling. Under this authority, the interim regulations in § 405.463(f) provided that new hospitals and risk-basis health maintenance organizations are exempt from the rate of increase ceiling. Under § 405.463(c), a hospital subject to the ceiling may request an exception to it on the basis of a change in case mix or extraordinary circumstances beyond the hospital's control with substantial cost effects. In addition, under § 405.463(b)(3), the ceiling will not apply

to a cost reporting period of less than 12 months that occurs along with a change in hospital operations that makes costs in a reporting period which would otherwise be subject to control not comparable to prior costs. Such a change could occur as a result of a merger or consolidation of hospitals. In addition, in § 405.463(h) we reserve authority to adjust a hospital's cost per case to take into account factors that would otherwise distort the comparison of costs between reporting periods.

(Although, as established by TEFRA, section 1886(b)(6) required the Secretary to provide an adjustment to decrease payment to non-profit hospitals that withdraw from the Social Security program, we did not include provisions for such an adjustment in the interim regulations. The amount of the adjustment under this provision would be offset by the amount of costs incurred by a hospital for an employee benefit program "comparable to, and in lieu of" Social Security benefits. The difficulties in defining the phrases "comparable to" and "in lieu of" prevented us from implementing this provision immediately. Since then, Pub. L. 98-21 rescinded this requirement.)

C. Summary of Changes in the Final Regulations

We have made relatively few changes in the interim regulations. The only change in the cost limit regulations is an amendment to add a new paragraph (b)(4) to § 405.460. This paragraph describes our authority to exclude certain classes of hospitals, such as children's or long-term-care hospitals, from a particular schedule of cost limits due to characteristics of the providers as a class, the cost data on which the limits are based, or the methodology for establishing the limits.

We have amended the rate of increase regulations [42 CFR 405.463] in two ways. First, in § 405.463(c)(1), we have excluded certain kidney acquisition costs from those inpatient operating costs subject to the rate of increase ceiling. (We have also excluded those costs from operating costs subject to the total cost limits. That did not require a revision of § 405.460, and is explained in the notice published elsewhere in this issue of the *Federal Register*.) Second, we have decided to revise the method of updating and notification of target rate percentages included in the interim regulations. Instead of requiring intermediaries to use the most recent percentage published in the annual cost limits notice, we will publish appropriate percentages quarterly.

Intermediaries will use the target rate percentage applicable to the calendar quarter during which a hospital's cost reporting period closes. We have therefore made conforming changes in the regulations.

In addition to these amendments to the regulations, we are, in response to comments, clarifying in this preamble our policies regarding implementation of the total cost limits and rate of increase target rates. (See section II. E., below.) For example, we have decided, for purposes of determining the amounts of incentive payments under the rate of increase rules, to recognize the full amount a hospital is able to justify as an exception to their total cost limit by setting their cost limit under the exception at a level that recognizes appropriately their performance under the rate of increase control. (Note that such exceptions would be used only for the determinations of incentive payments, and not for the determinations of allowable costs. Since section 1886(b) applies only to inpatient hospital services, this practice will not be extended to skilled nursing facilities and home health agencies. Exceptions for these providers will continue to be determined on the same basis as used in the past.)

II. Limitations on Reimbursable Costs (42 CFR 405.460)—Discussion of Comments on Interim Regulations

A. Introduction

We received many comments both on the interim regulations and on the separate schedule of cost limits published at the same time. The two documents and their respective comments are, of course, closely interrelated. To some extent, this preamble to the final regulations overlaps the discussion in the final notice published elsewhere in this issue of the *Federal Register*. However, it has not been possible to summarize and discuss all comments in both documents. For a full review of our responses and decisions on these regulations and the final case-mix adjusted hospital cost limits, both documents should be read together.

B. Exemption for Rural Hospitals With Less Than 50 Beds

Section 1886(a)(3) states that the new cost limits, effective for cost reporting periods beginning on or after October 1, 1982, shall not apply to any hospital that is located outside a Standard Metropolitan Statistical Area (SMSA), has less than 50 beds, and was in operation (with less than 50 beds) on September 3, 1982. Therefore, we added

this group of hospitals to those exempted from the cost limits under the regulations at § 405.460(e). The official geographic area designations are maintained and published periodically by the Executive Office of Management and Budget (EOMB). Until recently, these designations are called SMSAs. In June 1983, EOMB published new geographic area standards and designations, which are called Metropolitan Statistical Areas, or MSAs. However, we will use the SMSA designation in effect as of October 1, 1982, for all cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983.

Comment: In the preamble to the interim rules, we specified that hospitals must request such an exemption under the rules at § 405.460(c). A number of commenters requested that this exemption be made automatically. They argued that, because of its statutory basis, it should not require approval by HCFA.

Response: We have no basis for making the necessary determination automatically. Qualification for this exemption is dependent on determination of certain facts. We must determine a hospital's location and size as of a particular date. We do not have all the needed information currently on record, so we must obtain and verify it. Since the information is easily available, we expect to be able to expedite our review and determinations.

Historically, under § 405.460(c), any request for an exemption, exception, or reclassification has been submitted by a provider to its intermediary, which passes the request and its recommendation to HCFA for final approval. We have decided to continue this practice for at least the initial implementation of this exemption. Once we gain experience with this exemption, we will reevaluate whether approval authority should be delegated to the intermediaries.

C. Other Bases for Granting Exemptions and Exceptions

Comment: The interim rule provided an exemption in § 405.460(e)(4) for small hospitals only if they are rural, that is, located outside an SMSA. Several commenters argued that small hospitals have similar problems regardless of whether they are urban or rural, and recommended that we also exempt small urban hospitals.

Response: Section 1886(a)(3) clearly requires small rural hospitals to be exempted from the limits. While the Secretary has authority under section 1886(a)(2) to provide other exemptions as he deems appropriate, such

exemptions are not required. We do not believe it is appropriate to provide an exemption for small urban hospitals.

Congress exempted small rural hospitals because it was concerned about the impact the limits would have on the ability of these hospitals to provide services. The House version of H.R. 4961 provided an exemption for all small hospitals, but this was removed in Conference Committee (H.R. Rept. No. 97-760, page 418). If a rural hospital closes, Medicare beneficiaries may not have access to needed health services. This is generally not the case in urban areas, where there are more hospitals available.

Comment: In addition to the specific requests discussed above, commenters suggested that we incorporate in the regulations a variety of other bases for exemptions and exceptions. Some commenters argued that, since the case-mix adjusted limits apply to broader areas of costs than the earlier routine cost limits, HCFA should provide additional types of exemptions and exceptions to account for the wide variations in cost among hospitals and to allow for reimbursement of all reasonable costs. Several hospitals and industry associations recommended that we allow exceptions based on differences in the severity of illness. Commenters also pointed out that certain new services, added after approval under certificate-of-need requirements, may result in increased costs but no change in case mix, and recommended that exceptions be provided to account for such instances.

Response: In the interim final rules, we recognized the broadened effect of the new cost limits by providing in § 405.460(f)(9) for an exception to account for changes in case mix. As we implement these limits, we will continue to review their effect and will add or delete exemptions and exceptions as appropriate.

However, we have decided that we do not yet have an adequate basis to justify establishing additional exemptions and exceptions. For example, although we continue to explore the use of severity variables for their possible adoption in a more refined measure of case mix (see discussion in the schedule of limits published elsewhere in this issue of the *Federal Register*), we have not adopted the suggestion to provide exception criteria based on these variables. The state of the art is such that objective measures for assessing patient severity are insufficiently developed to allow for their incorporation in a national reimbursement system using present data. Further, the existing exception

criteria for a typical services (§ 405.460(f)(1)) do not preclude a provider from seeking an exception on the basis of severity of illness.

Similarly, we have not provided for specific exception criteria related to cost increases due to new services, because we do not believe the potential effects described by commenters are substantial enough to warrant establishing additional exceptions criteria. Generally, we expect that the addition of new services would result in enough patients that there would be little if any change in average cost per discharge. Also, we believe that in many instances "new" services, particularly new ancillary services, act as a replacement or substitute for existing services. Further, if the new services added do not generate a sufficient number of additional patients to avoid increased unit costs, that may be a presumptive indication of inefficiency. Since increased unit costs are not always a necessary result of added services, we believe the costs of such services should generally be subject to limitation. To the extent hospitals can demonstrate that increased unit costs are justified, we would consider exception requests on a case-by-case basis. We recognize that there may be situations in which the additional patients to utilize new services materialize slowly, resulting in an initial period during which the average cost per discharge increases temporarily.

We also recognize that there may be situations in which a hospital's overhead costs increase, increasing the average cost per discharge. For example, the hospital may have entered into a new data processing contract prior to implementation of the rate of increase control and the total cost limits, which results in an overhead increase sufficient to raise the hospital's per case costs. In these situations, we believe there is authority under the law and regulations (see 42 CFR 405.460(h) and 405.463(h)) to make adjustments to take account of the resulting cost distortions. An adjustment to take account of these increased costs would, of course, depend on the extent to which the costs are reasonable, attributable to the circumstances specified, separately identified by the hospital, and verified by the intermediary.

D. Exceptions for Change in Case Mix

Comment: The interim rules provided new exception criteria in § 405.460(f)(9) for hospitals that incur costs that exceed the case-mix adjusted limits due to significant and abrupt changes in case mix that result from the addition or discontinuation of services. Most

commenters recommended that these criteria be revised to take into account case-mix changes that were not "significant and abrupt", or that were not the result of adding or discontinuing services. The commenters noted that case mix may change as a result of changes in a hospital's medical staff or service area.

Response: Research indicates that a hospital's case-mix index has been relatively stable over time. Therefore, we do not believe that it is necessary to further broaden the exception request. To the extent a hospital believes it has incurred costs in excess of the limits for reasons other than inefficiency, and it does not qualify for the exception due to changes in case mix, there may be other exceptions available under the provisions of 42 CFR 405.460(f). We also wish to point out that the extent to which a hospital's case mix changes, for whatever reason, will be reflected in later schedules of limits, since the data on which the limits and the case-mix index are based are updated periodically.

However, a hospital may experience a change in its case mix as a result of external factors beyond its control. For example, this could occur in an area where a hospital closes, causing significant and abrupt changes in the services furnished by neighboring hospitals as they are forced to accommodate the patients previously served by the closed facility. In such a case, the per case costs of the neighboring hospitals could increase because of circumstances beyond their control. The provision for an exception due to extraordinary circumstances (§ 405.460(f)(2)) would be applicable in this situation.

E. Relation of the Amount of a Provider's Exception to the Provider's Rate of Increase Ceiling Target Amount

Comment: One comment concerned the statement in the interim regulations that the amount of an exception granted could not raise a hospital's cost limit above its actual cost. The commenter recommended that we permit a hospital's cost limit amount to be increased to reflect the additional justified costs established under the exception so that the limit would not reduce the potential reward that a hospital might earn under the rate of increase ceiling.

Response: Under the rate of increase provision of section 1886(b), a hospital may be paid an incentive payment if its actual costs are less than the hospital's target amount set under that provision. Congress provided such an incentive payment in recognition of a hospital's

performance in controlling the growth of its costs.

In part, the amount of a hospital's incentive payment is constrained by its cost limit, in that payment made under the rate-of-increase control provisions may not exceed a provider's case-mix adjusted cost limit. Our policy, prior to Pub. L. 97-248, has been to approve an exception (the purpose of which is to recognize a provider's costs in excess of its limit that are not related to inefficiency) only up to the provider's actual incurred cost. The continuation of this policy under the provisions of Pub. L. 97-248 could prevent a hospital from receiving the full amount of a rate-of-increase incentive payment for which it would otherwise qualify.

We agree with the commenters in that we believe it is inappropriate to offer a hospital an incentive payment as a bonus for its efficiency on one hand, while on the other hand, disallowing payment of the full amount of that incentive by applying a limit also designed to encourage efficiency. Therefore, we are revising our procedure for determining the amount of exceptions to allow the amount of a hospital's total cost limit under an exception to be set at a level recognizing the full amount of justified costs for the purpose of qualifying for the incentive payment under the rate-of-increase target rate provision. However, we must point out that this special determination of a cost limit amount recognizing costs justified under applicable exception criteria will be used only for the purpose of determining the incentive payment. We have no authority, except for the purpose of these bonus payments, to pay a provider any amounts in excess of costs that the provider actually incurs and reports on its Medicare cost report. (Note that this practice will not apply to exceptions for skilled nursing facilities and home health agencies, since they are not subject to the rate of increase control.)

F. Adjustments for Hospitals With a Disproportionate Share of Medicare Beneficiaries or Low Income Patients

Under section 1886(a)(2)(B), the Secretary is explicitly authorized to provide for exemptions, exceptions, or adjustments that he considers necessary and appropriate to take into account the special needs of "public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under Part A [of Medicare]". As explained in the preamble to the interim rules (page 43285, column 2), we did not make specific provision for these

hospitals because we did not have data that enabled us to determine the extent to which special consideration is warranted, or the type of provision that might be appropriate.

Comment: Several commenters stated that they believed we should make provision for adjustments reflecting the needs of these hospitals. It was argued that these hospitals have serious problems with bad debts and that they cannot rely on non-Medicare patients to pay costs that the commenters claim are attributable to Medicare patients but which the Medicare program does not pay.

Response: The commenters submitted little, if any, data that show costs in these hospitals to be higher due to a greater proportion of low-income or Medicare patients. To date we have not been able to demonstrate empirically that public hospitals, as a class, incur higher Medicare costs per discharge, after controlling for the effects of the other variables used to establish the cost limits. Hospitals, particularly public hospitals, have claimed that they face higher costs because they treat disproportionately large numbers of indigent patients and often provide substantial amounts of uncompensated care. They claim this places them at a disadvantage compared to other hospitals with respect to the cost limits.

However, cost of uncompensated care is not an allowable cost in the Medicare program because the law prohibits cross-subsidization, that is, sharing in costs of providing services to patients not covered by the program.

Although the new legislation authorizes special provisions for these hospitals, such an adjustment should be related to higher Medicare costs. The data now available to us do not give us a good basis for developing those provisions, and, to date, commenters have not provided data that would provide us this information. We have not been able to identify generally higher Medicare inpatient operating costs in these hospitals as a group.

In developing the schedule of limits published September 30, 1982, we did some preliminary analysis of case-mix adjusted cost per case in public hospitals and did not find appreciably higher cost in public hospitals as a group. We also found little relationship between cost and increases in Medicaid utilization (a proxy for the proportion of indigent patients). Each 10 percent increase in the ratio of Medicaid utilization above the mean explained only a six-tenth's of one percent increase in cost subject to the cost limit. This effect is negligible.

At the time we developed the interim final notice and regulations, we considered an adjustment similar to the teaching adjustment based on government ownership or Medicaid/Medicare utilization rates. However, we did not adopt this approach because our preliminary regression analysis indicated the result would be insignificant. We did not consider developing an adjustment based directly on income levels because it would require major additional reporting and would force hospitals to screen patient income. We also rejected the possibility of an adjustment based on a hospital's level of uncompensated care or bad debt experience because this would amount to a payment for services to noncovered patients and because it would impose major new reporting and auditing burdens.

Since that time we have continued to investigate the claims of public hospitals. After consultation with industry representatives, we agreed to an independent evaluation of our data and findings. This evaluation is still in progress. For these reasons, we have not added a specific exception or adjustment in 42 CFR 405.460, or in the cost limit methodology contained in the notice, for hospitals serving a disproportionate number of low income or Medicare Part A patients. If the independent evaluations, or additional information from another source, shows there is need and basis for an adjustment, we will revise the provisions on adjustments to the cost limits to take into account hospitals with a disproportionate share of low-income or Medicare patients. However, we wish to point out that at present these hospitals may otherwise qualify for the exceptions in 42 CFR 405.460.

III. Ceiling on the Rate of Hospital Cost Increases (42 CFR 405.463)—Discussion of Comments on Interim Regulations

A. Introduction

Many of the comments on the rate-of-increase ceiling dealt with its interaction with the hospital cost limits. In addition, many comments on exceptions were virtually identical regarding both the cost limit and rate of increase provisions. Readers should be sure to review the discussion of comments both in the schedule of cost limits published separately in this issue of the *Federal Register*, and in the section on the cost limits earlier in this preamble.

B. Costs Subject to the Ceiling

In § 405.463(c)(1) of the interim regulations, we stated that the rate of increase ceiling would apply to

operating costs incurred by a hospital in furnishing inpatient hospital services, including the operating costs of routine services (e.g., room, board, and routine nursing services), ancillary service operating costs (such as the costs of radiology or laboratory services), and special care unit operating costs. We excluded from these costs the cost of malpractice insurance, capital-related costs, and costs a hospital allocates to approved medical education programs on its cost report.

Comment: Several commenters questioned whether kidney acquisition costs would be included among the inpatient operating costs subject to the rate of increase ceiling. They believe that these costs should be excluded. Traditionally, Medicare has recognized these costs separately from other inpatient costs, and has made 100 percent reimbursement of net unrecovered kidney acquisition costs.

Response: We agree, and have appropriately amended § 405.463(c). While relatively few hospitals have large kidney acquisition costs, these costs are treated differently from other costs a hospital incurs. Under special statutory provisions establishing Medicare coverage for end-stage renal disease (ESRD) services, including transplantation, the Medicare program has assumed total liability (net of non-Medicare revenue) for kidney acquisition costs for Medicare beneficiaries even if a transplant has not occurred in a given hospital in a cost reporting period. Because of the unique nature of and special coverage provisions relating to kidney acquisition costs, we believe that these costs should not be subject to the rate of increase control. (We are also excluding these costs from the case-mix adjusted cost limits, as explained in the cost limit notice published elsewhere in this issue of the *Federal Register*.)

B. Determining Base-Year Costs

Under the interim rate of increase regulations, a hospital's cost increases are subject to a ceiling expressed as a target rate. This target rate is computed based on the hospital's allowable operating costs per case incurred in the 12-month cost reporting period (the "base year") immediately preceding the first cost reporting period subject to the ceiling. For the first period subject to the ceiling, the hospital's target rate would equal the base-year inpatient operating cost per discharge increased by a target rate percentage set at the hospital market basket index plus one percentage point. Each subsequent year's target rate would equal the

previous year's target rate increased by the subsequent year's target rate percentage. Under this system, base-year costs determine a hospital's target rate in all subsequent years subject to the rate. The importance of these base-year costs was reflected in comments concerned with how such base-year costs would be established.

Comment: In § 405.463(b)(1) of the interim rules, we specified that base-year costs would be based on allowable inpatient operating costs per case. Most commenters argued that base-year costs should be determined without regard to cost limits established under § 405.460. They stated that excluding costs in excess of the routine limits would result in those limits, in effect, being carried forward for the three year application of the rate-of-increase ceiling, in addition to the new total cost limits.

Response: We do not believe that we should include in the base-year costs used to calculate a hospital's rate-of-increase target rate those costs that the Medicare program determined to be unreasonable and therefore disallowed under the routine cost limits. There are several reasons for this.

First, if we included these costs in the base year, the target rate calculation method would compound their influence, carrying their effect through the target rates for all three years of the rate-of-increase limit. This result would not only carry forward recognition of expenses that had been legitimately found to be unnecessary and unreasonable in the efficient delivery of hospital services, but would also inflate them annually by the applicable target rate percentage. This does not seem to be an appropriate way to implement incentives established by Congress to reward efficient hospitals.

Second, we do not believe including these costs in the base year would be consistent with the statutory provisions or Congressional intent in establishing those provisions. Congress used the phrase "allowable operating costs of inpatient hospital services" in both section 1886(b)(3)(A)(i), describing the costs to be considered in the base year for purposes of the target rate, and section 1886(a)(1)(C), the "hold harmless" provision for purposes of the total operating cost limits, referring to what would generally be the same cost reporting period, that is, the hospital's last cost reporting period before the first period subject to the provisions of section 1886. In reference to section 1886(a)(1)(C), the Conference Committee report clearly stated that "in no case would reimbursement on a cost-per-case basis be reduced below the allowable cost-per-case reimbursement for the

hospital's cost reporting period that immediately precedes the first cost reporting period to which the new limitation is applicable." (H.R. Rept. No. 97-760, page 418. Emphasis added.) By applying this explanation of "allowable operating costs" to both contexts in which the identical language is used, it is clear that, for purposes of setting target amounts, we should consider only those base-year costs that were actually reimbursed, thus excluding any costs in excess of the cost limits in that year.

Comment: A number of commenters argued that, since the nursing differential was used to determine allowable costs under the routine cost limits applicable in the base year, these costs should not be excluded or adjusted out of the base year for purposes of determining target rate percentages, as provided in § 405.463(h)(2) of the interim rules.

Response: We disagree. The "inpatient routine nursing salary cost differential", or nursing differential, has been a plus factor incorporated in determining Medicare reasonable cost payment to hospitals and skilled nursing facilities (SNFs) since 1969. This factor was intended to account for the greater amounts of nursing care that older patients (e.g., Medicare beneficiaries) presumably required as compared with the needs of younger patients. This factor was reduced from 8½ percent to 5 percent for hospitals, effective October 1, 1981, by Pub. L. 97-35, and was eliminated for hospitals and SNFs, effective October 1, 1982, by Pub. L. 97-248. As a result of these statutory changes, allowable costs in part or all of the base year of some hospitals include an allowance for the nursing differential, while years subject to the rate of increase control would not include any allowance for the differential.

Therefore, including the nursing differential in base-year costs would distort those costs as compared to costs of years subject to the target rates. Further, it could result in an incentive payment being made in cases in which a hospital has not actually improved its performance against the target, or distort the amount of an incentive payment. This would not be in accordance with congressional intent. In section 1886(b)(4)(A), Congress provided that the Secretary may adjust costs, including costs in the base year, when those costs create a distortion in the increase in costs for a cost reporting period against which a hospital's rate of cost increase is measured. Including the nursing differential costs in a base period creates such a distortion. Since the costs are readily measurable, we believe it is appropriate to adjust base-

year costs to take the statutory termination of this differential into account.

C. Determining the Target Rate Percentage

In § 405.463(c)(3) of the interim rules, we provided that the target rate percentage for a particular 12-month cost reporting period would equal the market basket index plus one percentage point. The market basket index is a hospital wage and price index that incorporates appropriately weighted indicators of wages and prices that are representative of the mix of goods and services included in the most common categories of inpatient hospital operating costs subject to the ceiling. Since this target rate percentage would be identical to the rate of cost increase used in determining hospital cost limits in accordance with section 1886(a), we provided in § 405.463(c)(5) of the interim rules that the target rate percentage would be determined by intermediaries using the appropriate annual increase percentage published in the annual notice setting forth the schedule of hospital cost limits. (If a cost reporting period spanned portions of two calendar years, the intermediary would prorate the applicable calendar year percentage accordingly.)

Comment: A number of comments concerned the updating of the target rate percentage and expressed confusion as to which published rate should be used to determine the target amount. Some commenters believed that the target rate percentage should be updated and published quarterly and that the rate used should be the most recently published percentage at the time the cost report was filed. Other commenters felt that the rate should be established as of the beginning of the cost reporting period so that hospitals could budget accordingly. Still other commenters felt that at a minimum, the rate of increase percentage should be adjusted if it was underestimated by ½ of 1 percent or more. Along with the question of the percentage rate to be used, several commenters raised the question of the point at which the percentage rate would be established when a hospital appeals the reimbursement amount, and final settlement is delayed.

Response: As a result of these varied comments, we have reconsidered the provisions of the interim rules concerning updating and notification of target rate percentages. We decided that the method of determining the applicable target rate percentage should meet two objectives. First, the percentages applied to a given cost

reporting period should be the most accurate available. Second, each hospital should know as of a certain date what percentage will be applied in determining its target amount.

The annual market basket percentages published in the cost limits notices are prospective estimates of expected cost increases in the forthcoming calendar year. As such, they sometimes vary somewhat from the actual percentages shown by later data. Since the cost limits are prospective limits, the use of such prospective estimates is necessary and appropriate. However, the intent under the rate of increase ceiling is to compare a hospital's actual performance with a target rate derived from a base year. Because of the accent on actual performance in determining incentive payments (and reductions of the reimbursement amount), we believe that the market basket percentage used to calculate a hospital's target amount should be the most recent available at the end of a hospital's cost reporting period. Since, unlike settlement or filing dates, the end of a hospital's cost reporting period ordinarily does not change, this would meet both objectives.

Therefore, instead of using the annual prospective estimates published in the cost limit notices, we have decided to publish the most recent available market basket rates on a quarterly basis. We will publish the latest market basket index in the Medicare Provider Reimbursement Manual (HCFA Pub. 15-1) each quarter. At the same time, we will prepare a corresponding notice for publication in the Federal Register, although the procedural requirements in clearing notices for publication in this manner will probably result in its appearance somewhat later than the manual issuance.

Quarterly publication of recent market basket data will enable providers and intermediaries to use them in determining target rate percentages. Since the market basket rates are on a calendar year basis, the manual and notices will also include instructions for computing prorated target percentage rates for those hospitals that report their costs on other than a calendar year basis. Using the most recently available quarterly market basket rate will also ensure that each composite market basket rate will include two quarters of final market basket data, which past experience shows reduces the likelihood that later market basket data will result in final rates that differ significantly from those available at the close of a hospital's cost reporting period.

For the reason discussed above, we are not providing for retroactive

adjustment of the market basket rates used for establishing rate of increase target amounts. (We did make such adjustments to the market basket rates used to determine routine cost limits effective through September 30, 1982. However, as explained in the notice published elsewhere in this issue of the Federal Register, we have discontinued this practice with regard to the total cost limits.)

D. Exceptions

Comment: Many commenters objected to the criteria in § 405.463(f)(3) for an exception on the basis of a change in case mix, which require that such an exception be related to a distortion of a hospital's rate of cost increase due to adding or discontinuing services in a year after its base period. The commenters pointed out that case mix may change significantly due to other factors, such as expansion of services already offered, changes in the specialty composition of the medical staff, or changes in the composition of the population served.

Response: Although we agree that case mix may change as a result of many factors, we believe that in most such situations this does not produce a significant distortion in cost per case. Generally, such distortion would most likely occur when there are sudden changes in case mix for which adequate planning is not possible. We believe changes in case mix related to factors other than adding or discontinuing services will be gradual enough to permit the hospital time to adjust so that there will not be large scale cost increases per discharge. For example, expanding existing hospital services would also involve, in most instances, an increased number of patients producing little if any change in cost per discharge.

However, as with the exceptions to the cost limits under § 405.460, we must consider the situation of hospitals affected by the closing of another hospital in their area. These hospitals may experience significant and abrupt changes in their case mix and services as they try to accommodate patients previously served by the closed facility. Since such changes would be due to circumstances beyond a particular hospital's control, we would apply the exception criteria for extraordinary circumstances (§ 405.463(g)(2)) in such cases.

Comment: A number of commenters questioned whether the exception based on a change in case mix was available to psychiatric hospitals.

Response: Provided that the requirements for qualifying for an

exception are met, psychiatric hospitals are eligible for exceptions under the rate of increase provisions on the same basis as any other hospital.

Comment: One commenter asked us to clarify when an exception request may be filed. Specifically, the commenter wanted to know if a hospital could request an exception before a notice of program reimbursement (NPR) was issued by its fiscal intermediary. (An NPR is a written notice sent by the intermediary to a provider, following application of adjustments and determinations of the final retroactive adjustment to the provider's cost report, setting forth the amount of program reimbursement made to the provider for services furnished in the appropriate cost reporting period, including any underpayment or overpayment.)

Response: Under both the rate of increase ceiling and the total cost limits, a hospital may request an exception whenever it has a reasonable basis for estimating that its costs will exceed its rate of increase target amount or cost limit. We will adjudicate requests received before issuance of an NPR on an interim basis. The amount of exception granted will be subject to adjustment when actual costs are known.

Comment: Some commenters pointed out that a cost-increasing event or a change in case mix could occur late in a hospital's base year, and questioned how this would be treated or accounted for in exception determinations.

Response: We expect that any exception which is granted will take account of the point in time when the increased costs were incurred. The amount of any exception will be adjusted accordingly.

E. Adjustments

Comment: Several commenters expressed concern about the authority granted the Secretary, in section 1886(b)(4) of the Act, to adjust a hospital's subject year or base period costs to take account of cost distortions caused by a hospital eliminating a service it had previously furnished, or contracting out a service it had previously furnished directly (section 1886(b)(4)). The commenters believed that hospitals should be allowed to benefit by an increased incentive payment (or a reduced disallowance of costs over the target amount) when they lower their costs in these ways, since the Medicare program benefits from reduced costs. The hospitals believe they should be rewarded for this behavior, and that it would be inequitable for the Secretary to adjust

either base period or subject year costs so as to deprive them of this benefit.

Response: The purpose of the rate of increase control is to encourage efficiency on the part of hospitals, thereby reducing the growth of hospital costs. However, Congress was concerned that a hospital could, in certain situations, lower its costs by no longer furnishing certain services even though it had not actually become more efficient. In order to prevent such a hospital from benefiting from an incentive payment under the rate of increase provision, Congress authorized the Secretary to make appropriate adjustments.

We also wish to point out that, from the program's perspective, there are costs associated with a provider's ceasing to furnish services. If a hospital ceases to furnish a service, beneficiaries needing that service will be forced to turn to other hospitals, or will have to obtain the service under Part B of the program. In some situations, beneficiaries may not be able to obtain necessary services once the hospital ceases furnishing them. All of these possible outcomes have costs associated with them. The costs of other hospitals could possibly increase, or, if a beneficiary must obtain needed services under Part B of the program, costs are shifted from Part A to Part B. If services are obtained under Part B the beneficiary must pay coinsurance and, if assignment is not accepted, may also be liable for the difference between the reasonable charge and the actual charge. In these situations, it is questionable whether real savings have been obtained.

Comment: Several comments concerned the application of the rate of increase provision to hospitals that have traditionally operated efficiently, as measured by the routine hospital cost limits. These hospitals believe they should receive an adjustment in recognition of the fact that, because their base year costs are low, they will be less able to achieve further economies than will a hospital with higher base year costs, presumably reflecting greater inefficiency. These hospitals stress that their relative inability to improve the efficiency of their operation will make them more susceptible to exceeding their target amounts when they are faced with unavoidable cost increases, such as wage settlements resulting from a labor contract.

Response: Although the law grants the Secretary the authority to make adjustments in computing target amounts under section 1886(b), we do not think it is appropriate to recognize

an artificial base for hospitals that previously operated below their section 223 routine cost limits. Congress devised the rate of increase control provision in such a way that each hospital will be compared with its own performance. That is, each hospital's target amount is computed based on its own prior costs. If we were to adjust a hospital's base year costs to take into account efficiency relative to other hospitals, we would have to compare those costs, and possibly its prior year costs, to the costs of other hospitals rather than with its own cost experience. We do not believe that such comparisons would be consistent with the substance or the intent of the statute.

Comment: One commenter suggested that we permit hospitals to charge the beneficiaries to whom they furnish services to recover costs disallowed under the rate-of-increase ceiling.

Response: Section 1886(b) has no provision that would allow a hospital to charge a beneficiary to recover costs disallowed under its rate-of-increase target. Further, the congressional reports that accompanied Pub. L. 97-248 (H.R. 4961) include no indication that such charges should be allowed. Therefore, we have not revised the regulations at CFR 42.405.463 to permit a hospital to charge the beneficiaries it serves in order to recover these costs.

IV. Interaction With Other Regulations

A. Payment for Physician Services Furnished in Hospitals

On March 2, 1983, we published final rules, implementing section 108 of Pub. L. 97-248, on payment for physician services furnished in hospitals, SNFs, and comprehensive outpatient rehabilitation facilities (48 FR 8902). (The proposed rules on this subject were published October 1, 1982 (47 FR 43578), nearly the same date as the interim rules implementing section 101 of TEFRA.) Under those rules, which will be effective on October 1, 1983, we will reimburse on a reasonable cost basis certain physician services that, although of general benefit to patients, do not constitute services furnished to individual patients reimbursable on a Part B reasonable charge basis. This will particularly affect payment for clinical laboratory services furnished in hospitals. Currently, many pathologists customarily bill, and are paid, on a charge basis for professional services related to those clinical laboratory services. Under those new rules, we will pay for services furnished by a hospital laboratory to the hospital's patients on a reasonable cost basis in most cases. Those rules also include special

provisions on anesthesia and radiology services.

In the final rules, we projected that those changes would, assuming a May 1, 1983 implementation date, reduce Part B payments by \$45 million in fiscal year 1983, and \$179 million in fiscal year 1984, and would correspondingly increase Part A payment by \$15 million in fiscal year 1983, and \$60 million in fiscal year 1984. These changes from Part B to Part A are significantly smaller than those previously projected.

Comment: Based on the projections published in the NPRM on October 1, 1982, many hospital commenters were concerned that this "shift" from Part B to Part A would result in increases in their inpatient operating costs per case beyond their control. We received many inquiries as to whether the cost limits under section 1886(a) and the base year cost for the rate of increase control under section 1886(b) would be adjusted to take into account these other regulatory provisions.

Response: Both section 1886 (a) and (b) provide authority to make adjustments to take into account factors that significantly distort the operating costs of inpatient hospital services. We believe the regulations implementing this authority (at 42 CFR 405.460(h) and 405.463(h), respectively) permit us to make exceptions or adjustments, as appropriate, to account for any increase in costs that a hospital may incur as a result of the changes mandated by new regulations. An adjustment or an exception to account for increased costs would, of course, depend on the extent to which the costs are reasonable, attributable to the circumstances specified, separately identified by the hospital, and verified by the intermediary.

B. Swing-Bed Hospitals

Comment: Some commenters inquired as to the relationship between the inpatient operating costs of swing-bed hospitals and both the rate of increase provision and the total cost limits. The reason for the concern is that hospitals believe that the carve-out method of reimbursement for swing-bed hospitals (which was specified in section 904 of Pub. L. 97-499, the Omnibus Reconciliation Act of 1980, which enacted section 1883 of the Social Security Act) may cause an increase in a hospital's inpatient operating costs. With respect to the rate of increase control, hospitals are concerned that such higher costs would not be recognized in the base year if the hospital was not a swing-bed hospital during that year. With respect to the

total cost limits, swing-bed hospitals are concerned that they may in some situations exceed the limits solely due to the operation of the carve-out methodology.

Response: While we understand the concerns of these hospitals, we wish to point out that one of the major purposes of the swing-bed program is to permit a more efficient and cost-effective use of hospital facilities. Therefore, we would expect the per case costs of swing-bed hospitals to decrease rather than increase. It should be noted further that Congress also did not specifically provide for treatment to be accorded swing-bed hospitals under section 1886 different from the treatment accorded other hospitals. We conclude from this that Congress believed unit costs in swing-bed hospitals would not rise, and that they would not be impacted by the new limits solely because they are swing-bed hospitals. In addition, most swing-bed hospitals will be exempt from the total cost limits under section 1886(a), since those limits do not apply to hospitals of less than 50 beds located in non-SMSA areas that were in operation with less than 50 beds on September 3, 1982. Under section 1883(b), Medicare reimbursement to "swing-bed" hospitals that provide extended care services is made only to rural hospitals that have less than 50 beds.

However, we also believe that Congress meant to encourage eligible hospitals to elect to be swing-bed hospitals. We do not wish to discourage such elections. Therefore, we will review on a case-by-case basis any situation in which a swing-bed hospital believes it is adversely affected under either section 1886(a) or 1886(b) solely because of the operation of the carve-out reimbursement methodology. We wish to point out, in this connection, that the new limits will apply only to inpatient hospital services, and not to SNF-level services in swing-bed hospitals.

C. Prospective Payment System

As noted above, Title VI of Pub. L. 98-21 both amended sections 1886(a) and (b) of the Act and established a prospective payment system for inpatient hospital services that will be effective for hospital cost reporting periods beginning on or after October 1, 1983. The amendments to §§ 405.480 and 405.483 that are necessary to conform those rules to Pub. L. 98-21 and the prospective payment system will be made by the interim final rules, to be

published soon, implementing that system. However, the interim rules implementing section 101 of TEFRA, published September 30, 1982, as modified and affirmed by these final rules, will still govern the cost limits and rate of increase limits for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983.

V. Impact Analysis

A. Executive Order 12291

Section 1(b) of Executive Order 12291 states that a major rule is one that will:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Result in a major increase in costs or prices for consumers, individual industries, or government agencies, or geographic regions; or
- (3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that as a result of implementation of the case-mix adjusted hospital cost limits, net savings over projected expenditures for inpatient hospital services under the routine cost limits will increase by more than \$4.5 billion over the three-year period from fiscal year 1983 through fiscal year 1985.

In the interim final rules, we estimated that these statutory limitations on payment for inpatient hospital services would result in \$480 million in savings (\$75 million due to the case-mix adjusted cost limits and \$405 million due to the rate-of-increase ceiling) in addition to the savings projected at that time in the fiscal year 1983 budget for the routine cost limits. These revisions to the interim final rules will not produce significant differences in the aggregated effect of these limitations, and therefore will not result in changes to the savings we estimate will result from implementation of the total cost and rate-of-increase limits. However, since publication of the interim rules in September, 1982, we have revised the economic assumptions on which our estimates are based. This resulted in changes in assumed cost levels and in revised projections of the market basket index that produced savings estimates significantly different from our earlier estimates. We have reestimated accordingly the savings resulting from implementation of section 101(a) of TEFRA. These revised estimates are as follows:

REDUCTIONS BELOW BUDGET PROJECTIONS OF EXPENDITURES UNDER ROUTINE PER DIEM COST LIMITS

(In millions)

| Fiscal year | Case-mix adjusted limits | Rate of increase ceiling ¹ | Combined savings |
|-------------------|--------------------------|---------------------------------------|------------------|
| 1983 | \$50 | \$480 | \$530 |
| 1984 ² | 670 | 780 | 1,450 |
| 1985 | 1,320 | 1,300 | 2,620 |
| Total | 2,040 | 2,560 | 4,600 |

¹ The estimate for the rate of increase ceiling is for savings in addition to those due to the case-mix limits.

² Estimates for fiscal years 1984 and 1985 are based on the assumption that the case-mix adjusted limits for those periods will be set at 115 and 110 percent, respectively, of the average inpatient operating costs for groups of comparable hospitals.

Although the new rate of increase ceiling will have an annual effect on the economy of \$100 million or more, we have determined this impact will be caused by section 101 of Pub. L. 97-248, which requires imposition of the ceiling, rather than by this rule, which merely implements the statutory provisions. We have made this determination because the major features of the rate of increase ceiling are specified in the statute, and we do not have administrative discretion to develop alternatives to them. While the statute does allow the Secretary administrative discretion with respect to certain features of the ceiling provisions, these discretionary features will not have an impact of \$100 million or more, or meet the other threshold criteria of the Order. Therefore, a regulatory impact analysis is not required. (See the cost limits notice published elsewhere in this issue of the *Federal Register* for a discussion of the effects of the new case-mix adjusted cost limits.) However, the preamble to this rule describes the expected impact of the rule, and constitutes a regulatory impact analysis.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this final rule will not, in itself, result in a significant impact on a substantial number of small entities.

Generally, nearly all hospitals participating in Medicare are considered small entities for purposes of the Regulatory Flexibility Act. Although rural hospitals of less than 50 beds are exempted by law from the case-mix limits on total inpatient operating costs, they are not exempt from the rate-of-increase ceiling. Both the cost limits and the ceiling will clearly limit the revenues of a large number of small entities. The impact on individual hospitals will vary.

However, any adverse consequences of this impact can be avoided through the cost containment efforts we expect hospitals will make. Accordingly, we do not believe that a substantial number will actually experience a significant impact. In any event, any such impact will be the result of the statutory provisions (section 101(a) of Pub. L. 97-248), and not of the regulations that implement these provisions. Therefore, a regulatory flexibility analysis is not required.

Although a regulatory flexibility analysis is not required, we are aware that some hospitals may be concerned about the impact of these regulations. For the benefit of these hospitals, and to forestall any unnecessary concern regarding the effect of the regulations, the preamble presents an analysis which, taken as a whole, constitutes a regulatory flexibility analysis.

VI. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

Section 101 of Pub. L. 97-248 has a statutory effective date of October 1, 1982. Section 101(b)(2)(A) instructed the Secretary to implement section 101, through final regulations issued on an interim or other basis, by the effective date of the law.

These rules amend and establish as final the interim rules implementing section 101 that we published on September 30, 1982. Because the initial cost reporting periods to which those interim rules apply have not yet ended, and because we believe it best to apply one consistent set of rules to all affected periods beginning on or after the effective date of the interim rules, we are making these amendments effective the same as the interim rules. We believe it would be impracticable and contrary to the public interest to make these amendments effective on a date different from the interim rules. Therefore, we find good cause to waive the usual 30-day delay in the effective date, and to make these final regulations effective for hospital cost reporting periods beginning on or after October 1, 1982.

B. Paperwork Reduction Act

Information collection requirements imposed by regulations are normally subject to OMB review under section 3504(h) of Title 44, United States Code, as enacted by Pub. L. 96-511, the Paperwork Reduction Act of 1980. However section 101(b)(2)(B) of Pub. L. 97-248 specifically states that the information collection requirements imposed by regulations implementing

section 101(a) of Pub. L. 97-248 are not subject to that review until January 1, 1984. We have not yet submitted the information collection requirements imposed by the interim regulations (such as those governing requests for exceptions, exemptions, and adjustments) to OMB. These final regulations do not include any additional information collection requirements, but do establish the interim requirements as final. We plan to meet the requirements of Pub. L. 96-511 by January 1, 1984.

C. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405, Subpart D, is amended as set forth below:

1. The authority citation for Subpart D is revised to read as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Dialysis, and Services by Hospital-Based Physicians

Authority: Sections 1102, 1814(b), 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395f(a), 1395x(v), 1395hh, 1395rr, and 1395ww.

1. Sections 405.460 (a), (e), (f), (h), and 405.463, which were published in interim form in FR Doc. 82-27082 (47 FR 43282, September 30, 1982) are adopted as final rules as published.

2. Section 405.460 is amended by adding a new paragraph (b)(4), to read as follows:

§ 405.460 Limitations on reimbursable costs.

(b) * * *

(4) In establishing limits under paragraph (b)(1) of this section, HCFA may find it inappropriate to apply particular limits to a class of providers due to the characteristics of the provider class, the data on which those limits are

based, or the method by which the limits are determined. In such cases, HCFA may exclude that class of providers from the limits, explaining the basis of the exclusion in the notice setting forth the limits for the appropriate cost reporting periods.

3. Section 405.463 is amended by revising paragraph (c) to read as follows:

§ 405.463 Ceiling on rate of hospital increases.

(c) *Procedure for establishing the ceiling (target amount)*—(1) *Costs subject to the ceiling.* The cost per case ceiling established under this section applies to operating costs incurred by a hospital in furnishing inpatient hospital services. These operating costs include operating costs of routine services (as described in § 405.158(c)), ancillary service operating costs, and special care unit operating costs. These operating costs exclude the costs of malpractice insurance, certain kidney acquisition costs, capital-related costs, and costs a hospital allocates to approved medical education programs (nursing school or approved intern and resident programs) on its Medicare cost report.

(2) *Costs determined on a per case basis.* Costs subject to the ceiling as described in paragraph (c)(1) of this section will be determined on a per admission or per discharge basis as determined by HCFA for the purpose of the notice of cost limits established under § 405.460.

(3) *Target rate percentage.* The target rate percentage will be equal to the market basket index plus one percentage point. The market basket index is a hospital wage and price index that incorporates appropriately weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of inpatient hospital operating costs subject to the ceiling as described in paragraph (c)(1) of this section.

(4) *Target amount (ceiling).* The intermediary will establish for each hospital a ceiling on the reimbursable costs per case of that hospital. The ceiling for each 12-month cost reporting period will be set at a target amount determined as follows:

(i) For the first 12-month cost reporting period to which this ceiling applies, the target amount will equal the hospital's allowable operating costs per case for the hospital's base period increased by the target rate percentage for the subject period.

(ii) For subsequent 12-month cost reporting periods, the target amount will equal the hospital's target amount for the previous 12-month cost reporting period increased by the target rate percentage for the subject cost reporting period.

(5) *Notification of applicable target rate percentage.* (i) HCFA will publish revised percentage increase data for each quarter in the Medicare Provider Reimbursement Manual and the Federal Register.

(ii) The intermediary will use the applicable percentage increase for appropriate periods to determine the ceiling on the allowable rate of cost increase under this section.

(iii) When a cost reporting period spans portions of two calendar years, the intermediary will calculate an appropriate prorated percentage rate based on the published calendar year percentage rates.

(Catalog of Federal Domestic Assistance Program No. 13.773: Medicare-Hospital Insurance)

Dated: August 25, 1983.

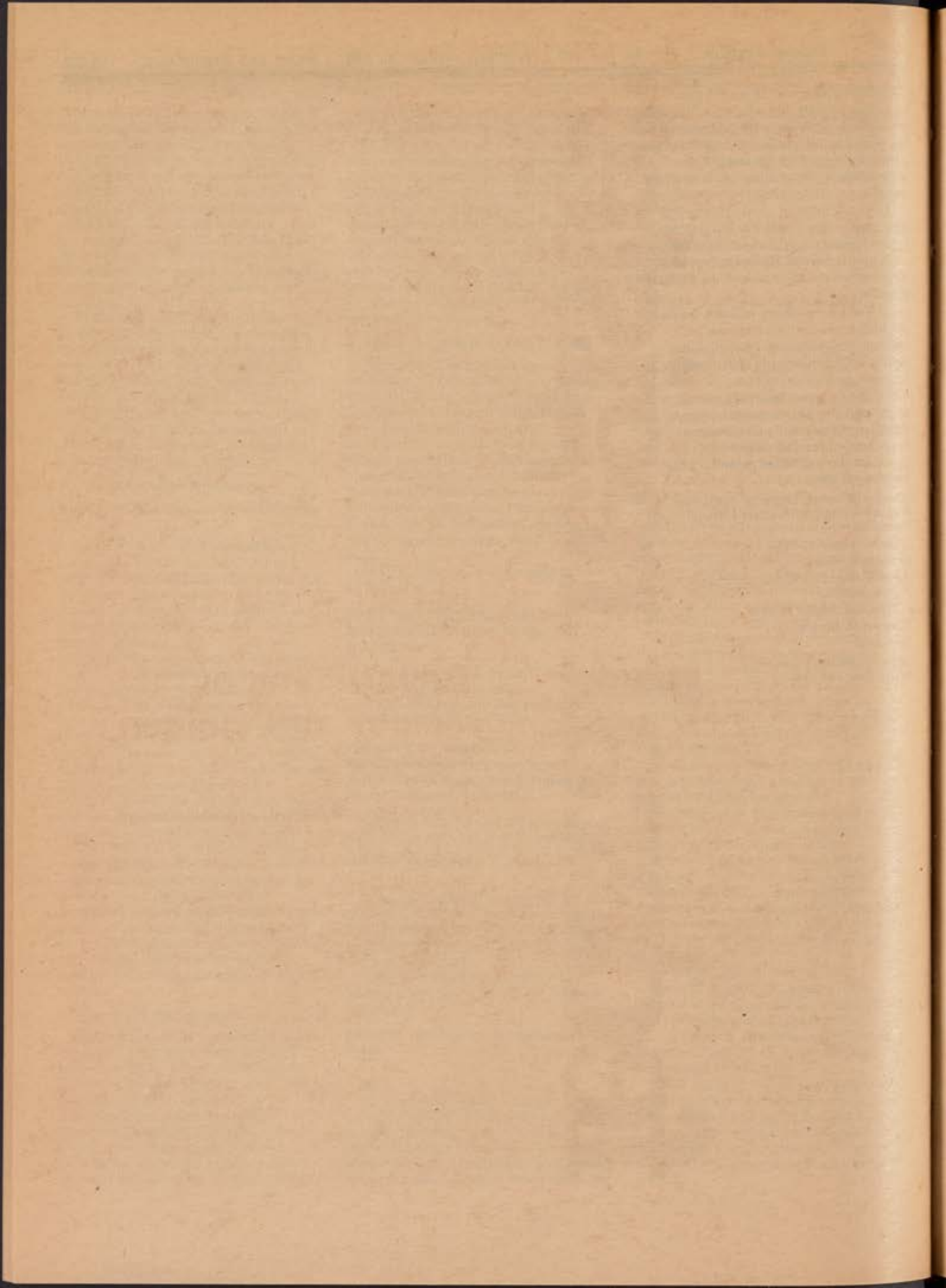
Carolyn K. Davis,
Administrator, Health Care Financing
Administration.

Approved: August 25, 1983.

Margaret M. Heckler,
Secretary.

[FR Doc. 83-23800 Filed 8-29-83; 8:45 am]

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Federal Register

**Tuesday
August 30, 1983**

Part VI

Department of Health and Human Services

Health Care Financing Administration

**Medicare Program; Schedule of Limits on
Inpatient Operating Costs for Cost
Reporting Periods Beginning On or After
October 1, 1982; Final Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Schedule of Limits on Hospital Inpatient Operating Costs for Cost Reporting Periods Beginning On or After October 1, 1982

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: On September 30, 1982, we published an interim final notice with comment period that set forth a schedule of limits on the hospital inpatient operating costs that may be reimbursed under Medicare for cost reporting periods beginning on or after October 1, 1982. These limits implemented changes in the Medicare law that were made by section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248. The interim final notice provided a 60-day period for public comment. This final notice responds to the comments received and sets forth revisions and corrections to the interim final notice.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Marilyn Koch, (301) 594-9344.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative History

Section 223 of the Social Security Amendments of 1972 (Pub. L. 92-603, enacted on October 10, 1972) amended section 1886(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) to authorize the Secretary to set prospective limits on the costs that are reimbursed under Medicare. Section 223 authorizes the Secretary to apply limits to direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider.

Regulations implementing this authority are at 42 CFR 405.460. Under this authority, we published limits on hospital inpatient general routine per diem costs annually from 1974 through 1981.

On September 3, 1982, the President signed into law the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248. Section 101(a) of that legislation added section 1886 to the Social Security Act. This new section includes two provisions that restrict the level of Medicare payment for costs of inpatient hospital services—section 1886(a), which provides for case-mix adjusted cost limits on inpatient hospital operating cost per case, and

section 1886(b), which provides a ceiling on the allowable rate of increase for inpatient operating costs. (Note that Pub. L. 98-21, enacted April 20, 1983, amended these provisions and established a prospective payment system for inpatient services that will be effective for cost reporting periods beginning on or after October 1, 1983. The interim rules implementing the prospective payment system, to be published soon, will include the amendments to regulations implementing sections 1886(a) and (b) that are necessary to conform to Pub. L. 98-21 and the prospective payment system.)

Section 1886(a) of the Act provides for the extension of the section 223 hospital cost limits, which had previously been applied only to inpatient general routine operating costs, to the operating costs of inpatient hospital services. These costs are defined in the statute as all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services. Section 1886(a) further specifies that the costs to which the expanded limits apply are to be determined on a per discharge or per admission basis, and requires that the limit for each hospital be set based on the mix of types of Medicare cases treated by the hospital. In addition, section 1886(a) specifies the level of the new limits at 120 percent of the mean for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983. (Section 101 of TEFRA also specified percentages for future years. However, section 601(a)(1) of Pub. L. 98-21 provided that such cost limits shall not apply to cost reporting periods beginning on or after October 1, 1983.) Section 1886(a) also requires the Secretary to provide for exemptions, exceptions, and adjustments to the limits as the Secretary deems appropriate.

Section 1886(b) provides for a new limitation on payment for hospital costs that is separate from the type of limit currently established under section 223. This provision requires that we establish a ceiling level for the allowable rate of increase of hospitals' inpatient operating costs per case, and provides for incentive payments to hospitals that keep their costs below a target amount, as well as reductions in the amount of reimbursement to hospitals that incur costs greater than the target amount.

Section 101(b) of Pub. L. 97-248 made the new section 1886 effective for cost reporting periods beginning on or after October 1, 1982, and provided that, in order to accomplish the effect of these provisions promptly, regulations needed

to implement them could be issued as final regulations without prior notice and comment. Further, section 101(b) exempts, until January 1, 1984, these necessary regulations from the Office of Management and Budget (OMB) review of information collection requirements that would otherwise be required under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

On September 30, 1982, we published an interim final notice and an interim final rule that implemented sections 1886(a) and (b) (47 FR 43296 and 47 FR 43282). The reader is referred to those documents for a more detailed explanation of these provisions, and for a description of our implementation of them. For the benefit of the reader, however, we have summarized, in section I.B. of this preamble, the major provisions of the interim final notice.

B. Major Features of the New Limits

The interim final notice provided for the extension of the section 223 hospital cost limits, which previously applied only to inpatient general routine operating costs, to the total operating costs of inpatient hospital services, including routine operating costs, ancillary service operating costs, and special care unit operating costs. The major features of the interim notice included

- Exclusion from the limits of capital-related costs, medical and nursing education costs, and malpractice insurance costs.
- Application of the limits on an average cost-per-discharge basis, rather than on a per diem basis as under the routine limits.
- Adjustment of the limit for each hospital based on the Medicare case-mix experience for that hospital. The adjustment is made through a Medicare case-mix index, which is derived by using Diagnosis Related Groups (DRG's).

The limits were calculated using historical Medicare cost report data that had been updated by a factor based on a combination of actual historical rates of increase in hospital costs up to the period subject to the limit and the market basket rate of increase plus one percentage point for the period covered by the limits. However, the interim notice did not provide that the limits will be retroactively adjusted when the forecasted market basket projections understate actual changes in the market basket. The interim notice also contained several provisions to assure that hospitals are not abruptly and adversely affected by the new limits. These provisions included:

- A hold harmless provision that assures that no hospital's limit will be lower than the hospital's reimbursable operating costs per discharge for inpatient services during the hospital's last cost reporting period immediately preceding the first cost reporting period subject to the new limits;

- A system of setting the limits at gradually decreasing percentages of the mean costs (from 120 percent to 110 percent) over the first three cost reporting periods subject to the new limits; and

- Procedures to allow adjustments, exemptions and exceptions to the limits to account for the special needs of hospitals under certain circumstances. (Interim final regulations implementing these adjustments, exemptions and exceptions, 42 CFR 405.460 (f) through (h), were also published on September 30, 1982, and are revised in a final rule published elsewhere in this issue of the Federal Register.

II. Summary of Changes

As a result of our evaluation of the public comments on the interim final notice published on September 30, 1982, we are making four major changes to the interim final notice. In summary, these changes include:

- Clarification of the exclusion from the limits of certain kidney acquisition costs;
- Clarification of the long-term care hospital exclusion;
- Addition of psychiatric hospitals, Christian Science Sanatoria, and subproviders to the list of excluded entities; and
- Clarification of the chart showing the estimated increase in hospital costs and the estimated increase in the adjusted market basket rate.

III. Public Comments

The interim final notice published on September 30, 1982, implementing the new hospital cost limits, provided for a 60-day period for public comment. During that time, we received approximately 100 comments, including responses from individual hospitals and hospital interest organizations, such as the American Hospital Association (AHA), law firms representing hospital interests, and intermediaries that make Medicare payment to hospitals. This section summarizes the principal comments received on issues raised by the interim final notice, and presents our response to these comments.

A. Applications of Limits on Cost Per Discharge Basis

Section 1886(a) of the Social Security

Act requires that the limits on hospital inpatient costs be applied, at the Secretary's discretion, on either a cost per admission or per discharge basis. This provision of the statute required a significant change in Medicare policy, since all previous hospital cost limit schedules had been applied on a per diem basis. Under limits applied on a per discharge basis, the hospital will be paid no more than a specified amount per Medicare patient stay without regard to the actual number of days of care each patient received or the per diem cost the hospital incurred to furnish this care.

The notice specifies that the intermediary, using the current definition of discharge in § 304.4 of HCFA Pub. 15-II-C (the Provider Reimbursement Manual), will multiply each hospital's per discharge limit by the number of Medicare discharges, and compare the resulting amount with the total inpatient hospital operating cost the hospital incurred to treat Medicare patients. The intermediary will then use the lesser of the two amounts as the basis for determining reimbursement to the hospital.

However, the notice also specifies that hospital inpatient operating cost limits do not apply to several types of costs a typical hospital may incur. These costs include outpatient service costs, capital-related costs, malpractice insurance costs, and costs a hospital allocates to the interns and residents (in approved programs) or nursing school cost centers on its Medicare cost report.

Comment: Several commenters noted that the Medicare cost report is not explicitly designed for application of the new cost per discharge limits. They suggested that we provide the detailed methodology for calculating the inpatient operating cost per discharge so as to properly exclude and apportion those costs outside the scope of the new limits.

Response: We agree that a more detailed explanation of the methodology for application of the new limits is necessary, particularly with respect to their impact on the manner in which costs are reported on the Medicare cost reports. However, we do not believe this explanation should be included in the notice of the limits. This type of detailed information is more appropriately disseminated through the HCFA instructions system. We are in the process of completing detailed instructions for calculating Medicare inpatient operating cost per discharge for application of the section 1886(a) limits. These instructions will be issued as a 1982 Amendments Supplement to

the Provider Reimbursement Manual (HCFA Pub. 15-1) in the near future. We anticipate that these instructions, as well as the necessary forms, will be ready in time for hospitals to file their cost reports under the new limits.

Comment: One commenter suggested that the current definition of discharge referenced in the interim final notice was inadequate for purposes of calculating the limits. This commenter noted that the current definition does not address transfers to another hospital, leaves of absence, one day stays, and discharges where the stay begins in one cost reporting period but ends in another.

Response: We do not believe the current manual definition of "discharge" poses a serious obstacle to the implementation of the new cost limits. We recognize minor difficulties presented by discharges that overlap cost reporting periods or that represent transfers between hospitals. However, we believe there are factors that mitigate the consequences of these difficulties. For example, the short stay characteristic of most transfers works to a hospital's advantage under the new per discharge limits. Further, cases that overlap cost reporting periods are also represented in the data base used to determine the limits; therefore, the limits already implicitly recognize the effect of this type of discharge. Consequently, the current definition of "discharge" does not present a severe potential for inaccuracy and, we believe, does not need to be changed.

Comment: Several commenters asked whether kidney acquisition costs are included among the inpatient operating costs subject to the new cost limits. They believe that these costs should be excluded. Traditionally, Medicare has recognized these costs separately from other inpatient costs, and has guaranteed 100 percent reimbursement of net unrecovered kidney acquisition costs.

Response: We agree that these costs should be excluded from the limits. While relatively few hospitals have large kidney acquisition costs, these costs are treated differently from other costs a hospital incurs. Under special statutory provisions establishing Medicare coverage for end-stage renal disease (ESRD) services, including transplantation, the Medicare program has assumed total liability (net of non-Medicare revenue) for kidney acquisition costs even if a transplant has not occurred in a given hospital in a cost reporting period. Because of the unique nature of, and special coverage

provisions for, kidney acquisition costs, we believe that these costs should not be subject to the case-mix adjusted cost limits. (We are also excluding these costs from the rate of increase control, as explained in the final rule published elsewhere in this issue of the *Federal Register*.)

Comment: Several commenters suggested that the new limits would have an adverse effect on the quality and availability of hospital care. These commenters pointed out that the cost per discharge limits provide several undesirable incentives. These incentives include a tendency to select the cheapest care rather than that which may be medically preferable, an orientation of services toward those who are less seriously ill, and an increased tendency for unnecessary admissions.

Response: We do not expect implementation of the new cost limits, or, for cost reporting periods beginning on or after October 1, 1983, the prospective payment system, to reduce the quality of care or to adversely affect access to services. HCFA demonstration results suggest that the new limits, which have a number of elements in common with several prospective payment systems, will reduce unnecessary services without endangering patient care. Preliminary findings from an evaluation of HCFA demonstration projects by ABT Associates Inc. indicate that of the 11 different prospective payment programs studied, there was no impact of prospective payment on quality of care. This finding is not surprising, since the physician is still ultimately responsible for ensuring appropriate treatment consistent with medical judgment.

We have established a medical review system in conjunction with the implementation of these cost limits and in anticipation of the prospective payment system that will monitor admission patterns to identify hospitals with unusual changes in their admission patterns. If there is no apparent reason for a particular change, the contractor responsible for reviewing the hospital and the appropriate medical review authority will be notified of the potential problem. This will focus quality of care review to ensure that beneficiaries continue to receive high quality care. The medical review authority, in investigating unusual cases, will pay particular attention to practices such as premature discharges, unnecessary readmissions, and inappropriate reduction of ancillary services.

B. Use of a Hospital Specific Case-Mix Index to Reflect Differences in Hospital Inpatient Operating Costs Attributable to Institutional Differences in Medicare Patient Mix

Section 1886(a) requires the Secretary to establish case mix indexes for all short-term hospitals, and to set limits for each hospital based on the mix of types of Medicare cases treated by the hospital. This adjustment recognizes that hospital costs for treating particular cases can vary widely depending on the nature of the patient's illness or injury, the age of the patient, whether medical or surgical treatment is indicated, and many other factors that are beyond a hospital's control and unrelated to the efficiency of its operations. The interim final notice specified that this adjustment would be accomplished by means of a Medicare case-mix index, using Diagnosis Related Groups (DRGs) as described in section III of the final notice.

Comment: Several commenters believed DRGs are not sufficiently sensitive to cost variations associated with the complexity of patient illness. They suggested the exception criteria be broadened to allow exceptions based on differences in severity of illness.

Response: Our primary objective in developing the case-mix index was to provide a measure that represents a valid and generally accurate representation of the expected costliness of an individual hospital's Medicare patient mix. We reviewed several patient classification systems that are currently available before deciding to use DRGs in developing our case-mix index.

After considering the advantages and disadvantages of the classification systems we reviewed, we chose to use DRGs to construct the case-mix index. Because our research on DRGs has shown that this classification system results in a manageable number of groups, relatively high clinical validity, and limited consequences of heterogeneity, we believe that, of the classification systems currently available, it best suits our needs for case-mix indexing of the limits. (For a more detailed explanation of the basis for this decision, see Pettengill and Vertrees, "Reliability and Validity in Hospital Case-Mix Measurement," *Health Care Financing Review*, December 1982, 101-128.) Moreover, the Conference Committee Report on Pub. L. 97-248 (H.R. Rep. No. 97-760, 97th Cong., 2nd Sess. (1982), p. 418) references use of a "currently available indicator of case-mix complexity such as the system developed at Yale University" in setting

the case-mix index. While inclusion of this reference to the DRG classification system would not preclude use of a different methodology for determining a case-mix index, it does support the methodology of choice.

With regard to this suggestion that we include an exception based on patient severity, we do not believe it is necessary to explicitly provide for an exception based on this factor. Hospitals experiencing costs in excess of the limits resulting solely from a large number of severely ill patients may apply for an exception under the atypical services criteria permitted by 42 CFR 405.460(f)(1).

Comment: Some commenters stated that HCFA's MEDPAR file failed to discriminate properly among cases with multiple secondary conditions. Because of the alleged prevalence of these cases in public hospitals, these commenters indicated the case-mix indexes were biased against public facilities, yielding inappropriately low cost limits.

Response: In the interim final schedule of limits, we described the data sources used to construct the case-mix indexes. One of these was the 1980 MEDPAR file, a data set consisting of approximately 2 million observations representing a 20 percent sample of claims from Medicare beneficiaries discharged from short-stay hospitals during calendar year 1980. Data elements in the file include patient diagnoses, procedures and billed charges for Medicare inpatient hospital claims. Along with the charge data contained on the inpatient bills (HEFA-1453's) that make up the MEDPAR file, hospitals are required to submit the principal diagnosis, primary procedure and secondary diagnoses and procedures. This information is coded for computer processing and is necessary for the proper assignment of a Medicare discharge to the appropriate DRG.

The case mix indexes are derived from Medicare DRGs constructed from the data items readily available from the HCFA-1453, the best data currently available to HCFA. While several municipal hospitals and hospital associations believed the Medicare DRGs to be inadequate measures of resource consumption in public hospitals, no evidence was submitted which would cause us to conclude the Medicare DRGs are inherently biased against public facilities.

We should point out that, for purposes of these cost limits, the Medicare DRGs differ from the full set of DRGs developed by Yale University. These Medicare DRGs have been specially

adapted to accommodate the elements of the MEDPAR data set. Medicare presently notes only the presence or absence of a secondary diagnosis. Thus, DRGs as developed by Yale University that were defined on the basis of specific secondary diagnoses have been combined to form more general categories in the Medicare case-mix index methodology. Also, Yale University DRGs distinguished on the basis of a substantial comorbidity or complication have been defined in the Medicare adaptation according to the presence of any secondary diagnosis. Further, the Medicare DRGs have not been defined on the basis of specific secondary procedures, or discharge status other than "dead" or "alive". (Under the prospective payment system, we plan to use the full set of DRGs developed by Yale. The use of DRGs in that system will be discussed in detail in the interim final rules, to be published soon, implementing that system.)

Since the presence of any secondary diagnosis is used instead of specific complications for purposes of assigning patient bills to DRGs, the commenters are concerned that some uncomplicated cases would be assigned to a complicated, more resource-intensive DRG. If this occurred for a significant number of cases, it would have the effect of lowering the relative cost for the computer program for classifying cases, are assigned to the complicated DRGs automatically. Additionally, many of the Medicare beneficiaries under age 70 have a secondary diagnosis and thus are also classified in the complicated DRGs. Therefore, the number of uncomplicated cases potentially falling into a complicated category must only be a small fraction of the total cases and this is unlikely to have any significant impact on the DRG cost estimates.

Section 1886(a)(2) of the Act requires the Secretary, as appropriate, to consider the special needs of certain classes of hospitals, including public hospitals, which incur additional costs because they serve a disproportionate number of low income patients or Part A Medicare beneficiaries. To date we have not been able to demonstrate empirically that public hospitals, as a class, incur higher Medicare costs per discharge, after controlling for the effects of the other variables believed to influence costs and recognized in establishing the cost limits. We consulted with representatives from the health care field on this issue and have arranged for a review of the available data on an independent basis. This review is still in progress. Until additional work can be completed, we

believe it is appropriate to continue the policy contained in the interim final notice. We shall continue our investigations, and, if an adjustment is warranted, we will provide for one in future schedules of limits.

Comment: One commenter noted that the routine and special care costs used to compute the DRG weights are constant (i.e., the average) within a hospital. Higher per diem costs may be associated with patients in higher cost DRGs. If true, this results in some compression of the DRG weights. It was suggested that raising the case mix index values to a power (determined by a regression coefficient) of 1.081 would correct for this compression.

Response: We do not believe it is appropriate to make the adjustment suggested, for several reasons. First, the difference between the suggested coefficient of 1.081 and the expected coefficient of 1.0 (i.e., no adjustment) is not statistically significant. Second, compression of the DRG weights due to the use of average per day costs for all case types is likely to be small. Our analysis indicates that the coefficient value referenced above is slightly greater than 1.0. Finally, the suggested adjustment would have a negative impact on any hospital with a case mix index value less than 1.0. We do not believe it is appropriate to affect adversely these hospitals by instituting an across-the-board adjustment of index values on the basis of an undemonstrated hypothesis concerning the construction of the weights.

Comment: We also received comments that the national sample of inpatient bills from 20 percent of the Medicare beneficiaries used to derive the case-mix indexes (the MEDPAR file) is not sufficiently representative of the actual mix of cases in individual hospitals.

Response: Our research indicates a 20 percent national sample is, on the whole, adequate to compute indexes which are reliable within acceptable statistical precision criteria. A hospital for which the number of usable cases was insufficient is permitted to use the higher of its published case-mix index or the average of the group in which it is classified. We recognize that this alternative does not guarantee that the selected case-mix index will be perfectly representative of the provider's Medicare patient mix. Further, the September 30, 1982 notice provided an opportunity for hospitals to submit 100 percent of their 1980 discharges in order to obtain a recalculation of their case-mix indexes, thus allowing hospitals to test the adequacy of the sample.

Comment: Several commenters pointed out that the interim final notice did not specify whether HCFA intended to compute the Medicare case-mix index annually. These commenters recommended using the most current discharge and related cost report data to annually recalculate the index.

Response: With respect to the frequency of recalculation of the case-mix index, the Conference Committee Report on section 101(a) of Pub. L. 97-248 states only that "The Secretary is expected to recalculate case-mix adjustments periodically." (H.R. No. 97-760, 97th Cong., 2nd Sess. (1982), p. 418.) There is no requirement that the recalculation be done annually.

While our research indicates that the Medicare case-mix index values remain relatively stable over time, there are, of course, circumstances that can alter the patient mix of a facility. In this connection, we also wish to point out that the regulations at 42 CFR 405.460 (f)(9) provide for recalculation of a hospital's case-mix index as a result of the addition or deletion of services.

Comment: Several commenters objected to limiting the case mix recalculation to complete 1980 discharge data, stating that this procedure fails to recognize that similar deficiencies probably exist in the 1981 and 1982 discharge records. Most of these records have already been submitted prior to hospitals becoming aware of the importance of complete and accurate reporting on the inpatient bill. Since we would probably use 1981 and 1982 MEDPAR data to derive case mix indexes for subsequent schedules of limits, these commenters recommended that hospitals be allowed to submit corrected discharge data to obtain recalculated indexes for any cost reporting period subject to the case mix adjustment. (In fact, we will be using 1981 data in implementing the prospective payment system for cost reporting periods beginning on or after October 1, 1983.)

Response: Research indicates that as a rule the case mix index is not greatly affected by errors in the MEDPAR data. As our research reports:

"Regardless of the errors which may exist ... the most significant finding of our research is the relative insensitivity of the case mix index to errors in the data. Even with 30 percent error, most simulated index values were within plus or minus 10 percent of the corresponding original values. We believe this indicates that the Medicare case mix index provides a valid and generally accurate representation of the expected costliness of an individual hospital's patient mix." (Pettengill and Vertrees, "Reliability and Validity in Hospital Case Mix

Measurement", *Health Care Financing Review*, December 1982, page 123.)

We believe the essential points to emphasize are the data's accuracy, which we expect since an inpatient bill is an official request for payment from the Medicare program for services furnished to a Medicare beneficiary, and the insensitivity of the indexes to the introduction of random error. While we did offer an opportunity for hospitals to obtain recalculations of their case mix indexes for 1 year, we do not believe, based on our research, that hospitals are systematically disadvantaged by our using hospital specific case mix indexes based on a 20 percent MEDPAR sample. Therefore, we do not believe it is necessary to extend the opportunity for the recalculation beyond the 1 year period. However, we will monitor the differences observed in recalculated indexes based on 100 percent submission of corrected 1980 data, and will consider whether it would be appropriate to increase the number of years for which a hospital may request a recalculation.

Comment: Several commenters stated that hospitals should have access to the data used to construct the Medicare case-mix index, since these data would enable them to respond more effectively to the management incentives of the limits.

Response: We agree that hospitals should have access to the data used to develop the new cost limits. We wish to point out that public access to disclosable information is ensured by the Freedom of Information Act. Since the publication of the interim final notice on September 30, 1982, we have made available data enabling a hospital to replicate the calculation of its case-mix index, as well as the MEDPAR records and cost reports used to derive the case-mix index and the limits. However, we wish to point out that the actual MEDPAR records for a hospital, while disclosable to that hospital, contain personal information about individual patients which precludes disclosure to a third party.

We will reply to all requests for information that may aid providers in a focused program of cost and service changes to achieve cost containment goals. While we cannot guarantee that all requested information will be disclosable or available in the desired format, we will continue to respond to all information requests and provide all readily available data to assist hospitals in their evaluation and management of costs.

C. Application of Limits to All Hospitals Except Small Rural Hospitals and Long-Term Care Hospitals

The statute (section 1886(a)) that authorizes the new cost limits specifically exempts rural hospitals that were in operation and had less than 50 beds on September 3, 1982. In addition, the interim final notice provides for the exclusion of children's hospitals and long-term care hospitals (hospitals with lengths of stay generally in excess of 30 days) from application of the hospital cost limits. We provided these exclusions because the number of Medicare discharge records available to us for children's hospitals was, in general, insufficient to permit us to compute statistically reliable case mix indexes. Additionally, it would be inappropriate to use data from short-term acute care hospitals to establish case mix adjusted limits for long-term care facilities.

Although section 1886(a)(2)(B) requires the Secretary to consider the special needs of psychiatric hospitals in developing exemptions from and exceptions and adjustments to the cost limits, the interim final notice did not specifically exclude psychiatric hospitals from the limits. We believed that the exclusion of long-term care hospitals from the limits would ensure that most psychiatric hospitals would not be disadvantaged. For those few psychiatric hospitals that are not long-term care providers, we believed the exception provisions of 42 CFR 405.460(f) would be sufficient to accommodate most circumstances that might result in a provider legitimately exceeding its cost limit.

Comment: Some commenters pointed out that use of the 30-day length of stay criterion might result in unreasonable inconsistency in the application of cost limits to hospitals with variable lengths of stay. Commenters also pointed out that facilities with variable or decreasing average lengths of stay would not know from year to year whether they would be subject to the limits.

Response: After considering the comments received on the long-term care exemption, we have decided to clarify the conditions which a hospital must meet in order to qualify as a long-term care hospital for the purpose of exclusion from the total cost limits. In the September 30, 1982, notice (see 47 FR 43299), we stated "long-term care hospitals are hospitals organized to provide long-term treatment programs with lengths of stay generally in excess of 30 days. These hospitals are identified by a distinct 'type of facility'

code in the third digit of the Medicare provider number."

We added the length of stay criterion because some hospitals originally certified as short-term hospitals in the Medicare program may have gradually changed their character so that they are now actually providing long-term care. However, provider numbers may not necessarily have been reissued to reflect the change. We intended that all hospitals that are certified as long-term care facilities be excluded from the cost limits, as well as hospitals that are certified as short-term facilities but have lengths of stay generally in excess of 30 days.

To make our position clear on this matter, we are revising the first paragraph of section E(3) of the September 30, 1982 notice (47 FR 43299) to specify that long-term care hospitals are hospitals organized to provide long-term treatment programs with lengths of stay generally of 25 days or more. This exclusion also applies to those hospitals identified by a distinct "type of facility" code in the third digit of the Medicare provider number, and to those hospitals that are certified as other than long-term care hospitals, but which have lengths of stay generally of 25 days or more. Where the determination is made on the basis of length of stay, the intermediary will use a definition similar to the definition used to determine long-term status for establishing separate cost entities in multiple-facility complexes. (See section 2336.1A of the Provider Reimbursement Manual, HCFA Pub. 15-1.) under that definition, but as modified for the purpose of this notice, an entity is considered "long-term" if over 50 percent of all patients have a stay of 25 days or more.)

We recognize that some facilities may have decreasing or variable lengths of stay. However, in determining that case-mix adjusted limits are inappropriate for application to long-term care hospitals, it was necessary to adopt a definition of those hospitals that is generally recognized.

Comment: Most psychiatric and rehabilitation providers commented that all psychiatric and rehabilitation hospitals should be excluded from the cost limits regardless of their length of stay. These commenters explained that the case mix index does not adequately reflect the types of patients treated in these facilities.

Response: Based on our analysis and the comments received, we agree that all Medicare certified psychiatric hospitals should be excluded from application of the case mix adjusted total cost limits. Since the current

categories of DRGs were developed from data from short-term acute care hospitals, the DRG based case mix index may not be appropriate for psychiatric hospitals. In addition, the trend in recent years has been toward discharging patients from psychiatric hospitals earlier than was formerly the case. We do not want to discourage this trend by instituting a requirement that psychiatric hospitals must have lengths of stay generally in excess of 25 days in order to be excluded from the limits. Keeping patients in the hospital longer than is medically necessary is not in the best interest of the patients and also results in the hospital incurring unnecessary costs.

We have also decided to exclude Christian Science Sanatoria, as identified by the Medicare provider number, from application of the total cost limits. As with long-term care hospitals, data from these facilities are not adequate to enable us to include them in a system of case mix adjusted limits that is based primarily on records from general short-term, acute care hospitals. We have made the necessary change in section E(3) of the September 30, 1982 notice of schedule of limits to reflect this additional exclusion. (See section IV of this notice.)

Rehabilitation hospitals are not separately certified in the same manner as psychiatric hospitals. Consequently, it is not administratively feasible to systematically exclude such hospitals from application of the limits. (We have had no way of easily identifying which hospitals are rehabilitation hospitals. However, Pub. L. 98-21 requires that they be excluded from the prospective payment system. Therefore, we have developed a definition for application in future cost reporting periods that will be included in the interim final rules implementing prospective payment.) Rehabilitation hospitals with lengths of stay less than 25 days, unless they are certified as long-term care hospitals, will be subject to the limits. However, to the extent the costs of these hospitals exceed the limits for reasons other than inefficiency, they will be eligible for exceptions under § 405.460 of the Medicare regulations.

Comment: Several commenters also recommended the exclusion of subproviders from the limits.

Response: A subprovider is an identifiable unit of a hospital whose character differs substantially from that of the main provider. (See sections 2336-2336.4 of the Provider Reimbursement Manual, HCFA Pub. 15-1). For example, a 300 bed acute, short-term hospital may have a 50 bed long-term care hospital unit as an integral part. Subproviders

are identified by a special identifier in the Medicare provider number.

Under the hospital inpatient routine operating cost limits (section 223 limits), the limit applicable to the main provider was also applied to the subprovider. To a large extent, this was possible because routine services are similar from one institution to another, regardless of differences in types of facilities. Our experience indicated that most subproviders had lower per diem costs than the main providers. To the extent a subprovider exceeded its cost limit, it could file for an exception under § 405.460 of the regulations.

An integral part of the total cost limits under section 1886(a) is a hospital specific case mix index. Subproviders pose special problems under a case mix adjustment system because the case mix index is based on inpatient bills from the main provider; it does not include any bills from the subprovider. In view of this, we have reconsidered our decision to subject subproviders to the new total cost limits. We do not believe it is appropriate to apply the case mix adjusted limit from the main provider to the subprovider, since the limit may not reflect the type of care furnished in the subprovider. Therefore, subproviders will also be excluded from application of the total cost limits.

However, we wish to point out that the potential for a disallowance of costs under the cost limits is not by itself sufficient reason to establish a subprovider. The patient service and accounting criteria described in §§ 2336.1 and 2336.2 of the Provider Reimbursement Manual must be met, and the HCFA regional office must approve the request. These criteria provide that with respect to patient service, the entity that the provider wishes to establish as a subprovider must have:

- (1) Separate admission, medical chart, and discharge procedures;
- (2) Separate physical arrangements, i.e., separate buildings or an equivalent separation in beds, nursing stations, equipment, etc.;
- (3) Separate and exclusive nursing staff organization;
- (4) Utilization review plans consistent with proper standards for the type of care furnished in the unit; and
- (5) If required by State law, separate licensing of the entity.

With respect to accounting, the provider must meet the following criteria:

- (1) Each subprovider must be treated as a separate cost center for cost-finding and apportionment purposes;
- (2) Cost reports for all components within a multiple-facility hospital must

be submitted simultaneously, cover the same fiscal period, and reflect the same method of cost apportionment;

(3) All components must be serviced by the same fiscal intermediary; and

(4) the provider must comply with all other rules set forth in HCFA manual instructions concerning effective dates of a change to a multiple-facility hospital, billing procedures, and the completion of individual schedules on the cost report.

D. Use of 1980 Medicare Cost Report and Billing Data

We derived the new hospital inpatient operating cost limits from Medicare records from three sources, as follows:

(1) Medicare hospital cost reports available as of May 1, 1981, which primarily consist of cost reports for fiscal years ending in 1980;

(2) Hospital billing data for calendar year 1980 from a 20 percent sample of Medicare beneficiaries (MEDPAR file); and

(3) A quarterly tabulation of Medicare discharges covering the same periods represented in the cost reports.

These data were the latest available for the construction of the cost per discharge limits.

Comment: One commenter made a number of points concerning deficiencies in the data base for the limits. This commenter alleged that cost reports in the data base are largely unaudited, that they are incomplete with regard to discharge data and that they handled malpractice insurance costs inconsistently. In addition, it was stated that high cost providers were excluded from the data base.

Response: In order that our data base be as current as possible, we use the most recent data available. This often means that the cost reports from which we extract data have not yet been audited. To the extent that unaudited cost reports contain higher costs than audited reports, the limits based on unaudited costs are not likely to result in any disadvantage to hospitals.

The comment concerning the accuracy and completeness of hospital reported discharge data may, to some extent, be valid. In the past, admission and discharge data were not used in determining a hospital's reimbursement. Now that costs limits are determined on a cost per discharge basis, we expect that these data in the future will be included on virtually all hospital cost reports, and that the quality of the data will improve. The present condition of the discharge data on the cost report is the reason why discharge data for computing the cost per discharge limits

were taken from HCFA's discharge notice file rather than from the cost reports in the data base. Moreover, we have permitted hospitals to submit actual complete discharge data for the calculation of their case mix index for the first year's application of the new cost limits if they desire.

With regard to the comment that reimbursement for malpractice insurance was not consistently handled, we do not believe this flaw in the data base would be disadvantageous to hospitals. First, malpractice insurance represents a very small portion of overall cost per discharge. Second, to the extent that some malpractice insurance costs are included in the calculation of the limit, but excluded in the application of the limit in determining Medicare reimbursement, the hospital is slightly advantaged.

With regard to the comment concerning the alleged exclusion of high costs providers from the data base, the only cost reports systematically excluded from the 1980 data base are those from long-term care hospitals (including psychiatric hospitals), children's hospitals, rural hospitals with less than 50 beds, and those that reflected periods of other than 12 months duration. These reports were excluded regardless of the relative level of costs. While edits were used to detect discrepancies and inaccuracies in the data, including cases where costs are particularly high, providers were not excluded from the data base because of their high costs.

E. Revised Market Basket Index

Since July 1, 1979, the hospital cost limit schedules have incorporated a market basket index to reflect changes in the prices of goods and services hospitals use in producing general inpatient routine services. Because the limits now apply to total inpatient operating costs, rather than only inpatient routine operating costs, we revised the market basket categories and the weights assigned to each category in the interim final notice to reflect this change in the scope of the limits. (See Appendix I of the September 30, 1982 interim final notice (47 FR 43313).)

Prior schedules of the routine cost limits were automatically increased if the actual rate of market basket inflation exceeded our projection beyond a certain tolerance. However, section 1886(a)(1)(B)(ii) of the Act provides that the cost limits must be derived, in part, using estimates of the actual rate of change in hospital costs to update the cost report data to the period immediately preceding the period

subject to the limits. Use of the market basket rate of inflation plus one percentage point is restricted to projecting costs for the period to which the limit applies.

Comment: We received several comments that neither the interim final schedule nor the accompanying rule published on September 30, 1982 specified whether the forecasted market basket rates of inflation would be revised if our projections proved inaccurate.

Response: We do not believe an automatic increase in the market basket when actual inflation exceeds our projection is consistent with the statutory intent of these prospectively determined limits. We should also point out that section 1886(a)(1)(B)(ii) requires that the cost limits incorporate inflation rates that are based not only on the hospital market basket but also on estimates of the actual rate of hospital cost inflation. In past years, the actual rates of hospital cost inflation have been well in excess of the market basket rates. Because prior schedules of cost limits were derived using market basket estimates of inflation exclusively, the effect of underestimating the actual rates was more pronounced. To make these schedules as accurate as possible, it was important to adjust the forecasted market basket rate to equal the actual rate of market basket inflation once a certain level was exceeded. Under the new limits, however, we believe the use of actual estimates of hospital cost inflation for prior periods, will sufficiently accommodate the potential for underestimating inflation in the hospital market basket index. Therefore, we have not adopted the suggestion that the cost limits be increased if our market basket forecasts, which are the latest available when the limits are established, underestimate the actual rates.

Comment: Other commenters recommended that the market basket estimates of inflation be revised based on either the most current forecasts or actual inflation rates available at the time of cost report settlement.

Response: The cost limits established under section 1886(a) are intended to be prospective in their application. We believe using the latest forecasts available at the time the limits are calculated is consistent with the concept of prospectivity. Further, as noted above, the inflation factor recognizes estimated actual rates of hospital cost increases up to the period covered by the limits.

Comment: One commenter suggested that the chart listing the estimated actual rates of increase and the

estimated market basket rates of increase plus one percent published in the interim final notice (47 FR 43302) be clarified to indicate the period evaluated.

Response: The chart reflects projected inflation and estimated market basket rates of increase on a calendar year rather than a fiscal year basis. To clarify this, we have reprinted the chart in section IV. of this final notice with a new heading for the first column.

F. Revised Wage Index

Since July 1, 1979, the schedules of hospital cost limits have incorporated a wage index to adjust for differences in the levels of labor-related costs among the areas in which hospitals are located. The hospital wage indexes are based on wage and employment data maintained by the Bureau of Labor Statistics (BLS) of the U.S. Department of Labor. Specifically, the source file has been the ES 202 Employment, Wages, and Contributions File for hospital workers.

The October 1, 1982 wage indexes were based on 1980 non-Federal BLS data. Previously, in developing the wage index, we first calculated the national average wage for hospital workers in urban areas and a separate national average wage for hospital workers in non-urban areas. In the interim final notice, we revised the methodology for calculating the wage index by relating the average area wage for urban and non-urban areas to a single national average wage. Although this change from a split to a combined wage index has no effect on either the accuracy or the dollar amount of any hospital's limit, use of a combined index permits direct comparison of the index values for urban and rural areas.

Comment: Several hospitals and industry associations pointed out that the BLS ES 202 data base has technical deficiencies that make it an imperfect source for a wage index adjuster. As examples, they cited that the data do not control for area differences in the proportion of part time employees and fail to consider local differences in fringe benefits, overtime utilization, or hospital occupational mix.

Response: The comments on the adequacy of the BLS ES 202 data for constructing the wage index correctly recognize that there are a variety of factors that can distort the measure, even where hospital wage levels are otherwise identical. However, to some extent the potential for distortion is mitigated by the use of aggregated data from all hospitals within the designated urban and rural areas. Presently, BLS wage and employment records are the

best available for the development of hospital wage indexes compatible with a national reimbursement system. Pending the development of a uniform national data base specifically designed to overcome the technical limitations of the BLS data, there is little more we can do at this time to improve the present wage index.

Comment: Several commenters also objected to the continued exclusion of wage and employment records from Federal hospitals in deriving the wage index, stating that Federal facilities compete in the same labor market as other hospitals. However, one group commented favorably on this change.

Response: The exclusion of Federal wage and employment records from the BLS data used to construct the hospital wage index has led to higher index values in some areas and lower index values in others. Where local Federal hospital wages are higher than those paid by non-Federal facilities, the exclusion of Federal wages has generally yielded a lower wage index value, other things being equal. In localities without Federal hospitals, the exclusion of Federal data yields higher index values due to the corresponding reduction in the national average hospital wage. Thus, the exclusion of Federal records has not resulted in lower wage index values across the board.

For reasons explained in the interim final schedule (47 FR 43301), the exclusion of Federal data should result in more comparable indexes among areas with otherwise similar hospital wage levels. To the extent hospitals must pay employees wage rates similar to those of Federal facilities to attract qualified personnel, this competitive behavior would be reflected in the non-Federal BLS data used to calculate the index. That is, if non-Federal facilities in an area pay wage rates relatively equivalent with those of Federal hospitals, the exclusion of Federal wages would have little effect on the wage index, other things being equal. Although we received comments objecting to the exclusion of Federal government hospital statistics in constructing the wage index, one commenter favored the exclusion, and stated that it had resulted in an improved measure. We also believe this exclusion is appropriate and have excluded Federal government hospital statistics from the BLS data base used to construct the hospital wage index.

Comment: Some commenters believe that the rural wage index does not adequately reflect wage rates that must be paid by rural hospitals in areas adjacent to urban locales. They

recommended rural hospitals be allowed to use the higher of the rural wage index or the index for the nearest urban area.

Response: We have not adopted the recommendation that rural hospitals be permitted to use the higher of the rural wage index or the index for the nearest urban area. The basis for this suggestion is that the application of a single rural wage index does not recognize the widely varying labor market conditions that may prevail throughout a State. However, simply permitting rural hospitals the use of the higher of two indexes would not properly address this problem. The comments concerning accuracy of the rural wage indexes imply that we should investigate a better means for aggregating rural counties to yield indexes more reflective of economically integrated rural areas. We will consider further analysis in this area to determine whether methods can be found to refine the rural area configuration.

IV. Changes in the Notice

As a result of the comments we received during the public comment period, we are making several changes to the interim final notice published September 30, 1982 (47 FR 43296). We are also designating that notice as no longer an interim notice.

A. Application of Limits to All Hospitals Except Rural Hospitals With Less Than 50 Beds, Children's Hospitals, and Long-Term Care Hospitals (47 FR 43299).

Section E of the interim final notice specifies that rural hospitals with less than 50 beds are exempt from the limits, and that children's hospitals and long-term with regard to those hospitals exempt from the limits, the title of section E is revised as follows:

E. Application of Limits to All Hospitals Except Rural Hospitals With Less Than 50 Beds, Children's Hospitals, Long-Term Care Hospitals, Psychiatric Hospitals, Christian Science Sanitoriums and Subproviders

With regard to the definition of long-term care hospitals, we are revising the first paragraph of section E. 3. of the September 30, 1982 notice (47 FR 43299) as follows:

(3) *Long-term care hospitals.* Long-term care hospitals are hospitals organized to provide long-term treatment programs with lengths of stay generally of 25 days or more. These hospitals may be identified in 2 ways:

(i) Those hospitals properly identified by a distinct "type of facility" code in the third digit of the Medicare provider number; or

(ii) Those hospitals that are certified as other than long-term care hospitals, but which have lengths of stay generally of 25 days or more. The fiscal intermediary will apply a [the] definition of "long-term" similar to the definition contained in section 2336.1(A) of the Provider Reimbursement Manual in making this determination.

Data from long-term care hospitals are not adequate to include them in a system of case mix adjusted limits based primarily on records from general short term acute care hospitals.

Paragraph 2 of section E. 3. should be deleted and replaced with a new subsection 4.

We are adding subsections 4 through 6 to section E. to read as follows:

4. *Psychiatric Hospitals.* Under section 1886(a)(2)(B), the Secretary is required to consider the special needs of psychiatric hospitals in developing exemptions from and exceptions to the cost limits. All Medicare certified psychiatric hospitals are excluded from application of the case mix adjusted total cost limits. Since the current categories of DRGs were developed from data from short-term acute care hospitals, the DRG based case mix index may not be appropriate for psychiatric hospitals. In addition, the trend in recent years has been toward discharging patients from psychiatric hospitals earlier than was formerly the case. We do not want to discourage this trend by instituting a requirement that psychiatric hospitals, in order to be excluded from application of the cost limit as long-term hospitals, must have lengths of stay generally in excess of 25 days. Keeping patients in a hospital longer than is medically necessary is not in the best interest of the patients and also results in the hospital incurring unnecessary costs.

5. *Christian Science Sanitoria.* Christian Science Sanitoria, as identified by the Medicare provider number, are excluded from application of the total cost limits. As with long-term care hospitals, data from these facilities are not adequate to include them in a system of case mix adjusted limits based primarily on records from general short-term acute care hospitals.

6. *Subproviders.* A subprovider is an identifiable unit of a hospital whose character differs substantially from that of the main provider (see sections 2336-2336.4 of the Provider Reimbursement Manual). A hospital specific case mix index is an integral part of the total cost limit under section 1886(a). However, this index is based on inpatient bills from the main provider; it does not include any bills from any subprovider

of the main provider. In view of this, we do not believe it is appropriate to apply the case mix adjusted limit from the main provider to the subprovider, since the limit may not reflect the type of care furnished in the subprovider. Therefore, subproviders are also excluded from application of the total cost limits.

However, we wish to point out that the potential for a disallowance of costs under the cost limits is not by itself sufficient reason to establish a subprovider. The patient service and accounting criteria described in §§ 2336.1 and 2336.2 of the Provider Reimbursement Manual must be met, and the HCFA regional office must approve the request.

B. Revised Market Basket Index

We are clarifying the chart of annual inflation rates that we used to establish the limits (47 FR 43302) to specify that the figures represent calendar year estimates, as follows:

| Calendar year | Estimated actual rate of increase in Medicare inpatient operating costs per discharge | Estimated market basket rate of increase plus one percentage point |
|---------------|---------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| 1980 | 12.9 | 12.8 |
| 1981 | 15.1 | 12.9 |
| 1982 | 14.3 | 9.9 |
| 1983 | 14.0 | 7.9 |
| 1984 | NA | 8.6 |

¹ For comparison only. These rates were not used to construct the cost per discharge limits.

C. Methodology for Determining Hospital Cost Limits

We are not revising the methodology for determining per discharge inpatient operating cost limits. See section VII. of the interim final notice published on September 30, 1982 (47 FR 43309) for a description of this methodology.

D. Corrections

In addition to making the substantive changes and clarifications described earlier in this preamble, we wish to correct a number of inadvertent omissions and errors that appeared in the interim final notice. Therefore, FR Doc. 82-27068, "Medicare Program; Schedule of Limits on Hospital Inpatient Operating Costs for Cost Reporting Periods Beginning on or after October 1, 1982", appearing at 47 FR 43296, September 30, 1982, is corrected as follows:

1. On page 43299, column 1, paragraph E. (1), line 6, "before September 3, 1982" is corrected to read "on September 3, 1982".

2. On page 43301, footnote 2 under the table entitled, "Hypothetical Sample Array" is revised for clarification.

Footnote 2 should read, "Mean deflated cost from column 4, multiplied by appropriate value in column 3".

3. On page 43304, column 3, paragraph b., the sentence beginning on line 22 is corrected to change "multiple" to "divide" and add language inadvertently omitted. As corrected, the language reads as follows: "We then divide the FTE intern and resident to bed ratio by 0.1, multiply the result by 6.06 percent, the education cost adjustment factor, and add the product to 1.0."

4. On page 43305, column 1, under Example 2, in the first line of mathematical computation, the second arithmetic sign should be a division sign. As corrected, that line reads " $77 \div 6861 \div .1 = 1.1224$ ".

5. On page 43307, column 3, paragraph B, line 20 is corrected by adding the word "not", which was inadvertently omitted. As corrected, the sentence beginning on line 20 reads as follows: "Accordingly, we do not believe that a substantial number will actually experience a significant impact."

6. On page 43309, column 2, line 16, the first number is corrected. As corrected, line 16 reads as follows: " $\$1646.09 \div [1 + (.0606 \times 1.1224)] = \1541.26 ".

7. On page 43310, column 2, line 13 is corrected by changing the first figure from ".1122" to ".11224". As corrected, line 13 reads, "Ratio .11224 $\div .1 = 1.1224$ Adjusted ratio".

8. On page 43310, column 2, line 15, the placement of the bracket is corrected to precede ".0606". As corrected, line 15 reads as follows: "Case-mix adjusted limit $\$6157.18 \times [1 + (.0606 \times .11224)] = \6480.00 ".

9. On page 43311, column 1, the language beginning on line 3 is corrected to add some working inadvertently omitted. As corrected, the language beginning on line 3 and continuing to "Example 3" reads as follows: "1450 Medicare discharges. B's reimbursement for allowable inpatient operating costs cannot be less than $1450 \times \$2,000$ or \$2,900,000".

10. On page 43312, column 2, line 3, "Redding, PA" is corrected to read "Redding, CA."

11. On page 43312, column 2, the wage index for Rock Hill, S.C. is corrected by adding a decimal point to read ".9181".

12. On page 43312, column 2, Table III.B., the wage index for Rhode Island, ".9628", is corrected to read ".9762".

13. On page 43312, column 3, Table V, in the entry for August 1, 1983, "1.06692" is corrected to read "1.06992".

V. Impact Analysis

A. Executive Order 12291

Section 1(b) of Executive Order 12291 states that a major rule is one that will:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Result in a major increase in costs or prices for consumers, individual industries, or government agencies, or geographic regions; or
- (3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The interim final notice contained an impact analysis of the effects of the new hospital cost limits. That analysis included estimates of program savings as a result of implementation of the new limits. We projected fiscal year 1983 savings of \$75 million over the estimated savings of \$333 million we would realize under the previous routine cost limits. For fiscal year 1984, we estimated that the new limits would result in net savings of \$405 million in addition to the savings we would realize under the routine limits. For fiscal year 1985, we projected additional net savings of \$1.03 billion over the savings that would occur under the routine limits.

The changes made in this final notice will not significantly affect the cost savings or otherwise alter the impact analysis contained in the interim final rule. However, since publishing the interim final notice, we have revised the economic assumptions on which our estimates of Medicare spending are based, and have reestimated accordingly the savings we expect to result from implementation of section 101(a) of TEFRA. This resulted in changes in assumed cost levels and in revised projections of the market basket index that produced savings projections significantly different from our earlier projections. The revised savings estimates are as follows:

REDUCTIONS BELOW BUDGET PROJECTIONS OF EXPENDITURES UNDER ROUTINE PER DIEM COST LIMITS

[In millions]

| Fiscal year | Case-mix adjusted limits | Rate of increase ceiling | Combined savings |
|-------------------|--------------------------|--------------------------|------------------|
| 1983 | \$50 | \$480 | \$530 |
| 1984 ¹ | 670 | 780 | 1,450 |
| 1985 | 1,320 | 1,300 | 2,620 |
| Total | 2,040 | 2,560 | 4,600 |

¹ The estimate for the rate of increase ceiling is for savings in addition to those due to the case-mix limits.

² Estimates for fiscal years 1984 and 1985 are based on the assumption that the case-mix adjusted limits for those periods will be set at 115 and 110 percent, respectively, of the average inpatient operating costs for groups of comparable hospitals, as provided in section 101(a) of TEFRA.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-54), that this final notice will not in itself result in a significant impact on a substantial number of small entities. Under the Regulatory Flexibility Act, the great majority of hospitals (e.g., all non-profit hospitals, regardless of size) are "small entities." The potential impact of this notice will fall on about 20 percent of the hospitals affected by the limits on inpatient operating costs, with an average potential Medicare reimbursement reduction of about 2 percent. However, any adverse consequences of this impact can be avoided through the cost containment efforts we expect hospitals will make. Accordingly, we do not believe that a substantial number of hospitals will actually experience a significant impact. In any event, any impact will be the result of the statutory provisions (section 101(a) of Pub. L. 97-248), and not of the regulations that implement

these provisions. Therefore, a regulatory flexibility analysis is not required.

Although a regulatory flexibility analysis is not required, the interim final notice discusses in detail the impact of these limits. See 47 FR 43307 for this information.

VI. Other Required Information

Section 101 of Pub. L. 97-248 has a statutory effective date of October 1, 1982. Section 101(b)(2)(A) instructed the Secretary to implement section 101, through final regulations issued on an interim or other basis, by the effective date of the law. Because this notice revises the interim notice, which is effective for cost reporting periods beginning on or after October 1, 1982, we believe it is important that we make this document effective on the same date as the interim document. If we were to provide the usual 30-day delay in effective date, some provisions of the notice would not be applicable to hospital cost reporting periods beginning before the date of publication of this

notice, and hospitals with cost reporting periods beginning on October 1, 1982 could be subject to different rules during different parts of a single cost reporting period. We believe that the administrative difficulties that could result from the use of different effective dates make use of a 30-day delay in effective date both impracticable and contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in effective date, and to make this notice effective on October 1, 1982.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: August 25, 1983.

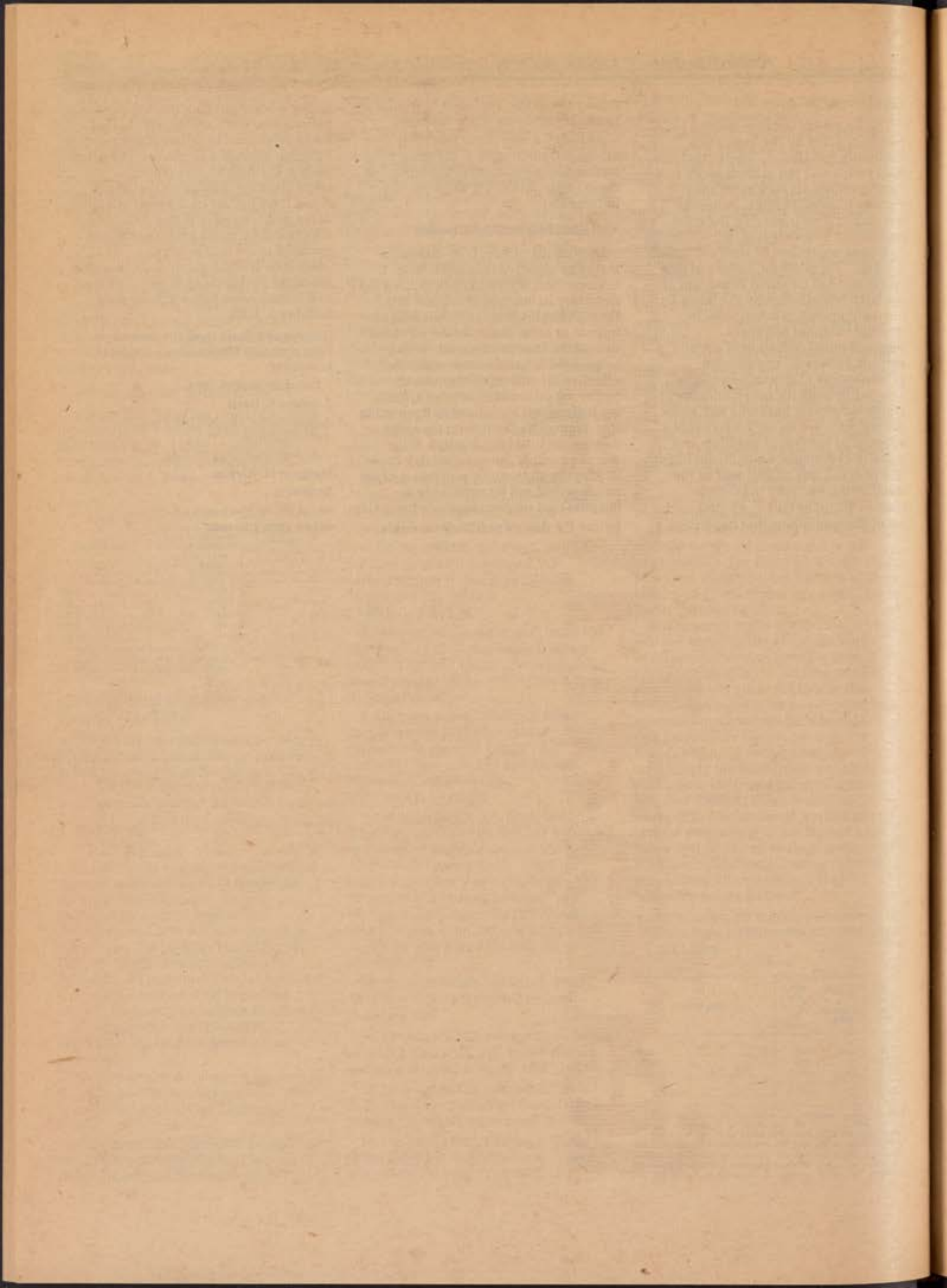
Carolyn K. Davis,
Administrator, Health Care Financing Administration.

Approved: August 25, 1983.

Margaret M. Heckler,
Secretary.

[FR Doc. 83-23801 Filed 8-29-83; 8:45 am]

BILLING CODE 4120-03-M



Federal Register

Tuesday
August 30, 1983

Part VII

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies
Under the Natural Gas Policy Act of
1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Volume 957]

Determinations by Jurisdictional
Agencies Under the Natural Gas Policy
Act of 1978

Issued: August 25, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol ST., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd. Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
107-CB: Geopressured brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED AUGUST 25, 1983

VOLUME 957

| JD NO | JA DKT | API NO | D SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|--------------------------------------|--------|------------|----------|--------|-----------------------------------|---------------|-------|-------------------|
| OHIO DEPARTMENT OF NATURAL RESOURCES | | | | | | | | |
| 8348900 | | 3415321385 | 107-TF | | BURSE UNIT #4 | COPLEY | 54.8 | |
| 8348901 | | 3407524039 | 103 | | VARISCO #1 | RICHLAND | 5.0 | COLUMBIA GAS TRAN |
| 8348902 | | 3416923469 | 103 | 107-TF | F & M WRIGHT #2 - 341293 | CHESTER | 0.0 | |
| 8348903 | | 3415321397 | 107-TF | | LINK #1 | COPLEY | 7.5 | EAST OHIO GAS CO |
| 8348904 | | 3416727415 | 103 | | A KLINGER #1 | WATERTOWN | 0.0 | |
| 8348905 | | 3411926630 | 103 | 107-TF | OHIO POWER 26-A | MEIGS | 35.2 | TEXAS EASTERN TRA |
| 8348906 | | 3412725921 | 107-TF | | PEARL R & BEULAH M WISEMAN #2-B | BEARFIELD TWP | 6.0 | NATIONAL GAS & OI |
| 8348907 | | 3408924405 | 103 | | AL LIPPERT #4-637 | | 10.0 | NEWZANE GAS CO |
| 8348908 | | 3415321339 | 107-TF | | KORAN-SHULLE UNIT #1 | BOSTON | 7.5 | EAST OHIO GAS CO |
| 8348909 | | 3405520199 | 107-RT | | BARNES #1 | HUNTSBURG | 16.0 | COLUMBIA GAS TRAN |
| 8348910 | | 3405520199 | 103 | | BARNES #1 | HUNTSBURG | 16.0 | COLUMBIA GAS TRAN |
| 8348911 | | 3405520254 | 107-RT | | MILLER #22 | HUNTSBURG | 18.0 | COLUMBIA GAS TRAN |
| 8348912 | | 3405520254 | 103 | | MILLER #22 | HUNTSBURG | 18.0 | COLUMBIA GAS TRAN |
| 8348913 | | 3400722177 | 103 | 107-TF | CLYMER #1 | CHERRY HILL | 20.0 | EAST OHIO GAS CO |
| 8348914 | | 3400722217 | 103 | 107-TF | YUHASZ #6 | COLEBROOK | 20.0 | EAST OHIO GAS CO |
| 8348915 | | 3409321134 | 107-TF | | FRANK AND MARILYN Y FETCHET #68-1 | COLUMBIA | 150.0 | COLUMBIA GAS TRAN |
| 8348916 | | 3409326436 | 107-TF | | FRUEH-PIDCOCK #21-9 | SALEM | 200.0 | EAST OHIO GAS CO |
| 8348917 | | 3412725887 | 107-TF | | CAMERON #11 | MONDAY CREEK | 15.0 | |
| 8348918 | | 3412725952 | 107-TF | | CAMERON #18 | MONDAY CREEK | 15.0 | |
| 8348919 | | 3412725913 | 107-TF | | GRIFFIN #2 | SALT LICK | 15.0 | FORACKER GAS CO I |
| 8348920 | | 3412725876 | 107-TF | | HILLIS/PEABODY/LEWIS #2 | PIKE | 10.0 | |
| 8348921 | | 3410522205 | 107-TF | | J B & ROBERTA O'BRIEN #5 | SALISBURY | 5.0 | COLUMBIA GAS TRAN |
| 8348922 | | 3405328010 | 107-TF | | MELVIN J STOVER #4 | CNESHIRE | 7.0 | COLUMBIA GAS TRAN |
| 8348923 | | 3410522675 | 107-TF | | HARLEY HYSSELL #1 | SALISBURY | 8.0 | COLUMBIA GAS TRAN |
| 8348924 | | 3410522676 | 107-TF | | HARLEY HYSSELL #2 | SALISBURY | 7.0 | COLUMBIA GAS TRAN |
| 8348925 | | 3400721011 | 103 | | BEN C SPRAGUE #1 | | 1.0 | JONES & LAUGHLIN |
| 8348926 | | 3407524009 | 107-TF | | NOAH SCHLABACH #1 | BERLIN | 12.0 | COLUMBIA GAS TRAN |
| 8348927 | | 3411926685 | 103 | 107-TF | C WATERS #1 | MONROE | 12.0 | |

| JO NO | JA DKT | API NO | D SEC(1) SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---------------------------------|-------------|-------------|-----------------|----------------------------------------|------------------------|-------|-------------------|
| LOMAK PETROLEUM INC | | | | | | | |
| 8348925 | | 3405520411 | RECEIVED: | 08/10/83 JA: OH | CLARIDON | 30.0 | EAST OHIO GAS CO |
| 8348927 | | 3405520492 | 107-TF | E HOFSTETTER #1 | CLARIDON | 30.0 | EAST OHIO GAS CO |
| 8348923 | | 3405520400 | 107-TF | F WILSON #2 | CLARIDON | 30.0 | EAST OHIO GAS CO |
| 8348924 | | 3405520409 | 107-TF | H STARR #2 | CLARIDON | 30.0 | EAST OHIO GAS CO |
| 8348926 | | 3405520412 | 107-TF | MIDDLE EAST BAPTIST CONFERENCE #1 | CLARIDON | 35.0 | EAST OHIO GAS CO |
| MAJ | | | | | | | |
| 8348928 | | 3414520289 | RECEIVED: | 08/10/83 JA: OH | MADISON | 0.7 | |
| 8348929 | | 3400722237 | RECEIVED: | 08/10/83 JA: OH | SHEFFIELD | 30.0 | EAST OHIO GAS CO |
| MARK RESOURCES CORP | | | | | | | |
| 8348934 | | 3416727455 | RECEIVED: | 08/10/83 JA: OH | PALMER | 1.0 | RIVER GAS CO |
| 8348933 | | 3416727452 | 103 | BOJANOWSKI #1 | PALMER | 2.0 | RIVER GAS CO |
| PETROLEUM ENERGY PRODUCING CORP | | | | | | | |
| 8348935 | | 3400720251 | RECEIVED: | 08/10/83 JA: OH | BUSHNELL | 2.5 | EAST OHIO GAS CO |
| POI ENERGY INC | | | | | | | |
| 8348936 | | 3405520481 | RECEIVED: | 08/10/83 JA: OH | BAINBRIDGE | 57.0 | |
| RELIANCE ENERGY | | | | | | | |
| 8348908 | | 3408323318 | RECEIVED: | 08/10/83 JA: OH | HARRISON | 6.0 | COLUMBIA GAS TRAN |
| RSC ENERGY CORP | | | | | | | |
| 8348938 | | 3409921571 | RECEIVED: | 08/10/83 JA: OH | BEAVER | 16.5 | REPUBLIC STEEL CO |
| 8348937 | | 3409921570 | 103 | 107-TF AMERICAN FIRE CLAY CORP-AFC #10 | BEAVER | 36.5 | REPUBLIC STEEL CO |
| SHIONUM OIL & GAS INC | | | | | | | |
| 8348941 | | 3416923548 | RECEIVED: | 08/10/83 JA: OH | SUGAR CREEK | 0.0 | |
| 8348939 | | 3416923541 | 107-TF | IVAN GERBER #1 | DALTON | 0.0 | |
| 8348940 | | 3416923512 | 107-TF | J BERG #1 | DALTON | 0.0 | |
| STRATA CORP | | | | | | | |
| 8348942 | | 3412724491 | RECEIVED: | 08/10/83 JA: OH | CLAYTON | 35.0 | |
| THE MUTUAL OIL & GAS COMPANY | | | | | | | |
| 8348930 | | 3411122611 | RECEIVED: | 08/10/83 JA: OH | SENECA | 12.0 | COLUMBIA GAS TRAN |
| 8348931 | | 3411122612 | 103 | ROSSI #4M | SENECA | 10.0 | COLUMBIA GAS TRAN |
| 8348932 | | 3411122902 | 103 | ROSSI #5M | SUGIT | 24.0 | NATIONAL PETROLEU |
| TIGER OIL INC | | | | | | | |
| 8348944 | | 3412123025 | RECEIVED: | 08/10/83 JA: OH | CENTER | 15.0 | EAST OHIO GAS CO |
| 8348945 | | 3412725982 | 103 | RUBEL/WYATT #1M | HOPEWELL | 5.0 | NATIONAL GAS & OI |
| TRIO PETRO INC | | | | | | | |
| 8348946 | | 3407720107 | RECEIVED: | 08/10/83 JA: OH | FITCHVILLE | 35.0 | |
| VALENTINE OIL PROPERTIES | | | | | | | |
| 8348947 | | 3416727496 | RECEIVED: | 08/10/83 JA: OH | ADAMS | 0.4 | |
| Viking Resources Corp | | | | | | | |
| 8348950 | | 3416723518 | RECEIVED: | 08/10/83 JA: OH | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348956 | | 3416725053 | 108 | ABBOTT #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348951 | | 3416723724 | 108 | ALLMAN #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348953 | | 3416724576 | 108 | AMOS/CHURCH #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348955 | | 3416724822 | 108 | BURNS #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348954 | | 3416724821 | 108 | DENZIL SMITH #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348952 | | 3416723727 | 108 | DENZIL SMITH #2 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348957 | | 3416725107 | 108 | J MORELAND #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348949 | | 3416723514 | 108 | MORRIS #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348948 | | 3416723451 | 108 | O MEASER #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| WILLISTON OIL CORP | | | | | | | |
| 8348960 | | 3411925044 | RECEIVED: | 08/10/83 JA: OH | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348959 | | 3411925043 | 107-TF | DAYLE DINGEY #1 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348958 | | 3411925042 | 107-TF | DAYLE DINGEY #2 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348961 | | 3411925103 | 107-TF | DAYLE DINGEY #3 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348963 | | 3411925105 | 107-TF | DAYLE DINGEY #4 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348962 | | 3411925104 | 107-TF | DAYLE DINGEY #5 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348964 | | 3411925106 | 107-TF | DAYLE DINGEY #6 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| 8348965 | | 3411925708 | 107-TF | FRANK WION #3 | BLUE ROCK | 14.6 | COLUMBIA GAS TRAN |
| TEXAS RAILROAD COMMISSION | | | | | | | |
| AEGEAN OIL CORP | | | | | | | |
| 8349021 | F-03-079986 | 4228731367 | RECEIVED: | 08/10/83 JA: TX | HOOKER CREEK (NAVARRO) | 94.9 | PHILLIPS PETROLEU |
| COASTAL OIL & GAS CORP | | | | | | | |
| 8349028 | F-8A-070997 | 4216532573 | RECEIVED: | 08/10/83 JA: TX | HARRIS (GLORIETA) | 10.0 | PHILLIPS PETROLEU |
| 8349018 | F-8A-070979 | 4216532577 | 103 | 50 HARRIS UNIT 12-5 | HARRIS (GLORIETA) | 8.0 | PHILLIPS PETROLEU |
| COLA PETROLEUM INC | | | | | | | |
| 8349003 | F-10-070937 | 4219530753 | RECEIVED: | 08/10/83 JA: TX | PHILIPS (OSWEGO) | 3.5 | PHILLIPS PETROLEU |
| CONOCO INC | | | | | | | |
| 8348982 | F-01-070867 | 4232331499 | RECEIVED: | 08/10/83 JA: TX | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348986 | F-01-070871 | 4232331501 | 103 | N J CHITTAM #E-3 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348978 | F-01-070863 | 4232331405 | 103 | N J CHITTAM #H-1 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348979 | F-01-070864 | 4232331406 | 103 | N J CHITTAM #6928 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348980 | F-01-070865 | 4232331352 | 103 | N J CHITTAM #6929 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348981 | F-01-070866 | 4232331351 | 103 | N J CHITTAM #6931 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348975 | F-01-070859 | 4232331415 | 103 | N J CHITTAM #6932 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348983 | F-01-070868 | 4232331414 | 103 | N J CHITTAM #6933 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348973 | F-01-070857 | 4232331416 | 103 | N J CHITTAM #6934 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348972 | F-01-070855 | 4232331418 | 103 | N J CHITTAM #6935 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348984 | F-01-070869 | 4232331419 | 103 | N J CHITTAM #6936 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348989 | F-01-070875 | 4232331420 | 103 | N J CHITTAM #6937 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348974 | F-01-070858 | 4232331367 | 103 | N J CHITTAM #6938 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348977 | F-01-070862 | 4232331371 | 103 | N J CHITTAM #7027 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348976 | F-01-070861 | 4232331372 | 103 | N J CHITTAM #7031 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348985 | F-01-070870 | 4232331373 | 103 | N J CHITTAM #7032 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348988 | F-01-070874 | 4232331374 | 103 | N J CHITTAM #7033 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348971 | F-01-070854 | 4232331413 | 103 | N J CHITTAM #7034 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348987 | F-01-070873 | 4232331376 | 103 | N J CHITTAM #7036 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348970 | F-01-070853 | 4232331506 | 103 | N J CHITTAM #7124 | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| CORPUS CHRISTI OIL AND GAS CO | | | | | | | |
| 8349041 | F-02-071026 | 4270330282 | RECEIVED: | 08/10/83 JA: TX | SACATOSA (SAN MIGUEL) | 0.7 | VALERO TRANSMISSI |
| 8348993 | F-02-070887 | 4260330199 | 102-4 | STATE TRACT 596-L NE/4 WELL #4-U | SHERMAN OFFSHORE S W | 0.0 | HOUSTON PIPELINE |
| 8348992 | F-02-070885 | 4260330199 | 102-4 | STATE TRACT 711-5 #1-L | STEAMBOAT PASS S (515) | 0.0 | HOUSTON PIPELINE |
| EXXON CORPORATION | | | | | | | |
| 8349037 | F-04-071016 | 4226130473 | RECEIVED: | 08/10/83 JA: TX | STEAMBOAT PASS S (510) | 0.0 | HOUSTON PIPELINE |
| 8349034 | F-04-071013 | 4227331732 | 103 | K R SAN JOSE DE LA PARRA 23-D105416 | CALANDRIA (G-33) | 825.0 | ARMCO STEEL CORP |
| 8349035 | F-04-071014 | 4227331753 | 102-4 | KING RANCH BORREGOS M-35-B (105420) | BORREGOS (M-23 NW III) | 267.0 | ARMCO STEEL CORP |
| 8349036 | F-04-071015 | 4227331753 | 102-4 | KING RAN E LAURELES B-18-D 105418 | BINA N E (H-50) | 580.0 | ARMCO STEEL CORP |
| 8349033 | F-04-071012 | 42264731217 | 102-4 | KING RAN E LAURELES B-18-F 105417 | BINA N E (H-22) | 425.0 | ARMCO STEEL CORP |
| GETTY OIL COMPANY | | | | | | | |
| 8348996 | F-06-078913 | 4236500000 | RECEIVED: | 08/10/83 JA: TX | VIDORAS (MASSIVE SECO) | 329.0 | ARMCO STEEL CORP |
| 8349038 | F-06-071018 | 4236500000 | 108 | RJ KLEBERG JR VIDORAS PA 107 105552 | VIDORAS (MASSIVE SECO) | 329.0 | ARMCO STEEL CORP |
| GULF OIL CORPORATION | | | | | | | |
| 8348996 | F-06-078913 | 4236500000 | RECEIVED: | 08/10/83 JA: TX | CARTHAGE (PALUYO) | 21.0 | TEXAS GAS TRANSMI |
| 8349038 | F-06-071018 | 4236500000 | 108 | A R CURTIS #2 RRC ID #32993 | CARTHAGE | 10.0 | TEXAS GAS TRANSMI |

| JD NO | JA DKT | API NO | D SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|--------------------------------------------------------------------------|-------------|------------|-----------|----------|---------------------------------|-----------------------|-------|-------------------|
| 8349029 | F-03-070998 | 4219931757 | 103 | | FOUNTAIN FEE #4 | SARATOGA WEST | 23.0 | MATADOR PIPELINE |
| 8349030 | F-03-070999 | 4219931812 | 103 | | FOUNTAIN FEE #5 | SARATOGA WEST | 31.0 | MATADOR PIPELINE |
| 8349031 | F-03-071000 | 4219931836 | 103 | | FOUNTAIN FEE #6 | SARATOGA WEST | 56.0 | MATADOR PIPELINE |
| 8348990 | F-08-070876 | 4210332663 | 108 | | W M MADDELL #1155 | DUNE | 0.0 | |
| -HEA EXPLORATION INC | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349042 | F-03-071029 | 4204130900 | 102-2 | | D TRIOLA #2 16403 | KURTEN (BUDA) | 150.0 | FERGUSON CROSSING |
| 8349043 | F-03-071030 | 4204130897 | 102-2 | | WILCOX UNIT #1 16401 | KURTEN (BUDA) | 150.0 | FERGUSON CROSSING |
| 8349044 | F-03-071031 | 4204130910 | 102-2 | | WILCOX UNIT #2 16401 | KURTEN (BUDA) | 150.0 | FERGUSON CROSSING |
| -KIM PETROLEUM CO INC | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349002 | F-10-070935 | 4217931332 | 103 | | CARROLL #1 | PANHANDLE GRAY COUNTY | 72.0 | CABOT PIPELINE CO |
| -KIRBY EXPLORATION CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349001 | F-02-070930 | 4270330280 | 102-4 | | STATE TRACT 659-L NW/4 #21 | MATAGORDA BLOCK 629 (| 180.0 | MATAGORDA PIPE LI |
| -MITCHELL ENERGY CORPORATION | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349032 | F-04-071004 | 4260230124 | 102-4 103 | | STATE TRACT 926-5 #1 #101246 | BLOCK 926-5 (FRID 10, | 0.0 | PASO NATURAL G |
| -MOBIL PRDG TEXAS & NEW MEXICO INC | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349039 | F-08-071019 | 4232931115 | 103 | | ROY PARKS #20 | PARKS (PENNSYLVANIAN) | 7.7 | PASO NATURAL G |
| -PENNZOIL PRODUCING COMPANY | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349040 | F-04-071020 | 4221500000 | 108 | | GARCIA UNIT #1 | SAN CARLOS (FD-93) | 13.0 | TAUHLIN GAS CO |
| -PETROLERO EXPLORATIONS INC | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349023 | F-7C-070990 | 4239932699 | 103 | | BRYAN #1 10050 | NORTON EAST (GARDNER | 53.6 | UNION TEXAS PETRO |
| 8349022 | F-7B-070989 | 4213334610 | 103 | | SCOTT "B" #1-1950A | KLEINER (LAKE SAND) | 85.6 | EL PASO HYDROCARB |
| -PHILLIPS PETROLEUM COMPANY | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349009 | F-10-070957 | 4223300000 | 108 | | DURDISE #2 | PANHANDLE HUTCHINSON | 0.0 | EL PASO NATURAL G |
| 8349010 | F-10-070958 | 4217900000 | 108 | | JOHNSON T #5 | PANHANDLE GRAY | 0.0 | |
| 8348997 | F-01-070914 | 4219500000 | 105 | | MINDA A #2 | WILLIAMS - MIDDLE MOR | 0.0 | PANHANDLE EASTERN |
| 8349007 | F-10-070955 | 4217900000 | 108 | | PHIL-PAMPA #7-9 | PANHANDLE GRAY | 0.0 | GETTY OIL CO |
| 8349008 | F-10-070956 | 4223300000 | 108 | | WHITTENBURG #14 | PANHANDLE HUTCHINSON | 0.0 | EL PASO NATURAL G |
| -RANKIN OIL CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8348994 | F-08-070907 | 4200332147 | 103 | | PARKER #4 | FURNMAN-MASCHO | 1.0 | PHILLIPS PETROLEU |
| -RUST OIL CORP | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349004 | F-7B-070941 | 4235300000 | 103 | | R R PETTY #2 | HYLTON NW (GOEN) | 3.6 | PALO DURO PIPELIN |
| -SANTA FE ENERGY PRODUCTS CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349019 | F-8A-070981 | 4207931652 | 103 | | WEST LEVALLAND UNIT #196 | LEVALLAND | 3.0 | AMOCO PRODUCTION |
| -SHELL OIL CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349017 | F-08-070977 | 4210534161 | 103 | | SOUTH CROSS UNIT #207 | CROSSETT 5 (DETITAL) | 120.5 | SHELL OIL CO |
| -SUN EXPLORATION & PRODUCTION CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8348998 | F-01-070915 | 4212700000 | 103 | | BIG WELLS (SAN MIGUEL) UT #1094 | BIG WELLS (SAN MIGUEL | 12.0 | HOUSTON PIPE LINE |
| 8349014 | F-04-070965 | 4213136058 | 103 | | DUVAL COUNTY RANCH COMPANY #52 | CASA BLANCA | 0.4 | VALERO INTERSTATE |
| 8349013 | F-6E-070964 | 4218300000 | 108 | | G S MATTOX #3 | EAST TEXAS | 0.3 | WARREN PETROLEUM |
| 8349000 | F-08-070917 | 4233532459 | 103 | | J F MCCABE "A" #14 | JAMESON N (ELLEN) | 24.0 | LONE STAR GAS CO |
| 8349011 | F-7B-070959 | 4214300000 | 108 | | T P FEE 41-B #1 | X-RAY (MARBLE FALLS) | 6.0 | LONE STAR GAS CO |
| 8348999 | F-7C-070916 | 4210534186 | 103 | | UNIVERSITY D #14 | FARMER (SAN ANDRES) | 18.0 | J L DAVIS |
| 8349015 | F-08-070967 | 4233532492 | 103 | | V T MCCABE "D" #19 | JAMESON N (ODOM) | 7.0 | LONE STAR GAS CO |
| 8349012 | F-7B-070960 | 4216700000 | 108 | | W L SIMMONS #1 | LAKE MINERAL WELLS (4 | 4.0 | SOUTHWESTERN GAS |
| 8349016 | F-8A-070969 | 4207931632 | 103 | | WRIGHT UNIT #11-34A | LEVALLAND | 2.0 | CITIES SERVICE CO |
| -TED TRUE INC | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349006 | F-10-070951 | 4234100000 | 103 | | BROWN 22-3 | PANHANDLE MOORE COUNT | 0.0 | PANHANDLE EASTERN |
| 8349005 | F-10-070950 | 4206500000 | 103 | | WARE 84-1 | PANHANDLE | 0.0 | CABOT PIPELINE CO |
| -TEXACAL DRILLING CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8348995 | F-7B-070910 | 4204932680 | 102-4 | | A A MARTIN "A" #1 (17052) | GROSVENOR SW (DUFFER) | 5.0 | EL PASO HYDROCARB |
| -UNION OIL COMPANY OF CALIF | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8348991 | F-8A-070884 | 4230330863 | 102-2 | | O C HORNE #2 | EDMISSON (CLEARFORK) | 3.0 | |
| -W B D OIL & GAS CO | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349024 | F-10-070993 | 4234130941 | 103 | | SANDRA #1 (ID# 05396) | PANHANDLE MOORE | 136.0 | DIAMOND SHAMROCK |
| 8349025 | F-10-070994 | 4234130936 | 103 | | SANDRA #4 (ID# 05396) | PANHANDLE MOORE | 131.0 | DIAMOND SHAMROCK |
| 8349026 | F-10-070995 | 4234130875 | 103 | | WADE #2 (ID# 05397) | PANHANDLE MOORE | 50.0 | PHILLIPS PETROLEU |
| 8349027 | F-10-070996 | 4234130877 | 103 | | WADE #4 (ID# 05397) | PANHANDLE MOORE | 60.0 | PHILLIPS PETROLEU |
| -WILSON ENERGY INC | | | RECEIVED: | 08/10/83 | JA: TX | | | |
| 8349020 | F-08-070983 | 4231732592 | 103 | | NAIL "E" #1 | SPRABERRY (TREND AREA | 0.3 | ADDOE OIL & GAS C |
| ***** | | | | | | | | |
| WEST VIRGINIA DEPARTMENT OF MINES | | | | | | | | |
| ***** | | | | | | | | |
| -ENERGY UNLIMITED INC | | | RECEIVED: | 08/10/83 | JA: WV | | | |
| 8348969 | | 4710701160 | 103 | | M WELCH #1 | UNION DISTRICT | 0.0 | CONSOLIDATED GAS |
| ***** | | | | | | | | |
| DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, LOS ANGELES, CA | | | | | | | | |
| ***** | | | | | | | | |
| -UNION OIL COMPANY OF CALIF | | | RECEIVED: | 08/10/83 | JA: CA | | | |
| 8349045 | DCS-P-15-83 | 0431120540 | 102-5 | | SANTA CLARA UNIT 5-12 | CALIFORNIA OFFSHORE | 0.0 | PACIFIC LIGHTING |

[FK Doc. 83-23012 Filed 8-29-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 958]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued August 25, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd. Springfield, Va 22161.

Categories within each NGPA section

are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease
Section 107-DP: 15,000 feet or deeper
107-GB: Geopressed brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS

VOLUME 958

ISSUED AUGUST 25, 1983

| JD NO | JA DKT | API NO | D SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|----------------------------------------------------|-------------|------------|-----------|------------------------------|-----------|-----------------------|-------|-------------------|
| ALABAMA OIL & GAS BOARD | | | | | | | | |
| ***** | | | | | | | | |
| -BROWNING & WELCH INC | | | RECEIVED: | | 08/10/83 | JA: AL | | |
| 8349065 | 8-4-839PD | 0105720318 | 102-2 | J C SHEPHERD 18-6 #1 | | DAVIS CHAPEL | 270.0 | CORONADO TRANSMIS |
| -CARLESS RESOURCES INC | | | RECEIVED: | | 08/10/83 | JA: AL | | |
| 8349064 | 8-4-837PD | 0112520102 | 102-2 | GILLIAM 3-16 | | LEXINGTON | 0.0 | SOUTHERN NATURAL |
| -ENHANCED ENERGY RESOURCES | | | RECEIVED: | | 08/10/83 | JA: AL | | |
| 8349056 | 6-30-8310PD | 0112520100 | 107-C5 | SHOOK LEASE #35-11-3 | | BROOKWOOD COAL DEGASI | 0.0 | SOUTHERN NATURAL |
| 8349057 | 6-30-8311PD | 0112520101 | 107-C5 | SHOOK LEASE #35-12-4 | | BROOKWOOD COAL DEGASI | 0.0 | SOUTHERN NATURAL |
| 8349058 | 6-3-8312PD | 0112520104 | 107-C5 | SHOOK LEASE #35-14-6 | | BROOKWOOD COAL DEGASI | 0.0 | SOUTHERN NATURAL |
| -GRACE PETROLEUM CORPORATION | | | RECEIVED: | | 08/10/83 | JA: AL | | |
| 8349055 | 5-26-835PD | 0105720011 | 108-ER | ANTHONY 3-4 | | DAVIS CHAPEL | 0.0 | CORONADO TRANSMIS |
| -TERRA RESOURCES INC | | | RECEIVED: | | 08/10/83 | JA: AL | | |
| 8349059 | 8-4-831PD | 0107520457 | 102-2 | DUBOSE 15-5 | | LITTLE HELLS CREEK | 0.0 | HOWELL PIPELINE C |
| 8349061 | 8-4-833PD | 0107520235 | 102-2 | MORRISON #35-1 | | BLOWHORN CREEK | 0.0 | HOWELL PIPELINE C |
| 8349060 | 8-4-832PD | 0107520235 | 102-2 | MORRISON #35-1 | | BLOWHORN CREEK | 0.0 | HOWELL PIPELINE C |
| 8349063 | 8-4-835PD | 0107520323 | 102-2 | MORRISON #36-4 | | BLOWHORN CREEK | 0.0 | HOWELL PIPELINE C |
| 8349062 | 8-4-834PD | 0107520323 | 102-4 | MORRISON #36-4 | | BLOWHORN CREEK | 0.0 | HOWELL PIPELINE C |
| ***** | | | | | | | | |
| MONTANA BOARD OF OIL & GAS CONSERVATION | | | | | | | | |
| ***** | | | | | | | | |
| -BEREN CORPORATION | | | RECEIVED: | | 08/11/83 | JA: MT | | |
| 8349047 | 8-82-218 | 2509121344 | 102-2 | ANDERSON #1 | | DAOMAR | 9.0 | PHILLIPS PETROLEU |
| 8349046 | 8-82-219 | 2509121289 | 102-2 | CHRISTENSEN "A" #1 | | LOWELL | 11.5 | PHILLIPS PETROLEU |
| -COASTAL OIL & GAS CORP | | | RECEIVED: | | 08/11/83 | JA: MT | | |
| 8349048 | 8-82-216 | 2508321639 | 102-2 | COGC-CANTERRA 35-23-55 BN #1 | | FOXLAKE | 21.0 | PHILLIPS PETROLEU |
| -MIDLANDS GAS CORPORATION | | | RECEIVED: | | 08/11/83 | JA: MT | | |
| 8349049 | 8-82-217 | 2507121636 | 108 | 0360 HELLIE 1 | | UNNAMED | 21.0 | KN ENERGY INC |
| -SEBASTIAN RESOURCES LTD | | | RECEIVED: | | 08/11/83 | JA: MT | | |
| 8349050 | 8-82-215 | 2504122234 | 102-4 | STATE 1-36-T32N-R16E | | TIGER RIDGE | 18.3 | |
| ***** | | | | | | | | |
| NORTH DAKOTA INDUSTRIAL COMMISSION | | | | | | | | |
| ***** | | | | | | | | |
| -BELCO PETROLEUM CORPORATION | | | RECEIVED: | | 08/11/83 | JA: ND | | |
| 8349051 | 795 | 3305300000 | 102-4 | EDGAR BN 13-13 | | ROUGHIDER | 0.0 | KOCH OIL CORP INC |
| -EDWIN L & BERRY R COX | | | RECEIVED: | | 08/11/83 | JA: ND | | |
| 8349054 | 794 | 3305301568 | 102-4 | BERTINUSON #11-30 | | UNDESIGNATED | 180.0 | PHILLIPS PETROLEU |
| -MOHSANTO COMPANY | | | RECEIVED: | | 08/11/83 | JA: ND | | |
| 8349052 | 792 | 3301300832 | 102-4 | GRANDALL #1 | | N E FOOTHILLS | 4.0 | CITIES SERVICE CO |
| -PENNZOIL COMPANY | | | RECEIVED: | | 08/11/83 | JA: ND | | |
| 8349053 | 793 | 3305301581 | 102-4 | SPRING CREEK #27-31BH | | WILDCAT | 40.0 | KERR-MCGEE CORP |
| ***** | | | | | | | | |
| PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES | | | | | | | | |
| ***** | | | | | | | | |
| -CASTLE GAS CO INC | | | RECEIVED: | | 08/11/83 | JA: PA | | |
| 8349083 | 20539 | 3706325214 | 108 | B ABEL #1 (C-590) IND-25214 | | GRANT TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349086 | 20540 | 3706325215 | 108 | B ABEL #2 (C-591) IND-25215 | | GRANT TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349087 | 20541 | 3706325395 | 108 | B ABEL #3 (C-648) IND-25395 | | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |

| JD NO | JA DKT | API NO | D SEC(1) SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|--------------------------------------|-------------|------------|-----------------|-------------------------------------|------------------------|-------|-------------------|
| 8349093 | 20550 | 3706325381 | 108 | C BROWN #1 (C-595) IND-25381 | GRANT TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349094 | 20551 | 3706325382 | 108 | C BROWN #2 (C-645) IND-25382 | GRANT TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349095 | 20552 | 3706325473 | 108 | C BROWN #3 (C-696) IND-25473 | GRANT TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349103 | 20560 | 3706325563 | 108 | C GREEN #3 (C-636) IND-25563 | GREEN TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349101 | 20558 | 3706325562 | 108 | C GREENE #1 (C-634) IND-25562 | GREEN TOWNSHIP | 2.1 | COLUMBIA GAS TRAN |
| 8349102 | 20559 | 3706325577 | 108 | C GREENE #2 (C-635) IND-25577 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349114 | 20571 | 3706325222 | 108 | D J HTLL #1 (C-596) IND-25222 | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349112 | 20569 | 3706325207 | 108 | E I HENRY #1 (C-593) IND-25207 | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349113 | 20570 | 3706325387 | 108 | E I HENRY #2 (C-649) IND-25387 | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349117 | 20574 | 3706325275 | 108 | E LEWIS #1 (C-589) IND-25275 | GRANT TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349115 | 20572 | 3706325388 | 108 | G LENZ #1 (C-631) IND-25388 | GREEN TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349116 | 20573 | 3706325419 | 108 | G LENZ #2 (C-630) IND-25419 | GREEN TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349104 | 20561 | 3706326272 | 108 | H GREENE #2 (C-638) IND-26273 | GREEN TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349105 | 20562 | 3706326273 | 108 | J C GREENE #1 (C-655) IND-25239 | GREEN TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349106 | 20563 | 3706325239 | 108 | J C GREENE #2 (C-656) IND-25240 | GREEN TOWNSHIP | 2.1 | COLUMBIA GAS TRAN |
| 8349107 | 20564 | 3706325240 | 108 | J EDWARDS #1 (C-640) IND-25474 | GREEN TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349099 | 20556 | 3706325474 | 108 | J EDWARDS #2 (C-715) IND-26228 | GRANT TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349100 | 20557 | 3706325208 | 108 | L MUMAU (167A) #1 (C-599) IND-25208 | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349118 | 20575 | 3706325209 | 108 | L MUMAU (167A) #2 (C-600) IND-25209 | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349119 | 20576 | 3706325269 | 108 | L MUMAU (167A) #3 (C-646) IND-25269 | GRANT TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349120 | 20577 | 3706325242 | 108 | P BORUCH #1 (C-663) IND-25242 | GREEN TWP | 4.4 | COLUMBIA GAS TRAN |
| 8349088 | 20542 | 3706325243 | 108 | P BORUCH #2 (C-664) IND-25243 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349080 | 20543 | 3706325244 | 108 | P BORUCH #3 (C-665) IND-25244 | GREEN TOWNSHIP | 2.1 | COLUMBIA GAS TRAN |
| 8349081 | 20544 | 3706325297 | 108 | P BORUCH #4 (C-666) IND-25297 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349082 | 20545 | 3706325245 | 108 | P BORUCH #5 (C-667) IND-25245 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349089 | 20546 | 3706325298 | 108 | P BORUCH #6 (C-668) IND-25298 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349091 | 20548 | 3706325246 | 108 | P BORUCH #7 (C-669) IND-25246 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349092 | 20549 | 3706325697 | 108 | P BORUCH #8 (C-700) IND-25697 | GREEN TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349096 | 20553 | 3706325134 | 108 | R BUTERBAUGH #1 (C-586) IND-25134 | GRANT TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349097 | 20554 | 3706325135 | 108 | R BUTERBAUGH #2 (C-587) IND-25135 | GRANT TWP | 2.1 | COLUMBIA GAS TRAN |
| 8349098 | 20555 | 3706325136 | 108 | R BUTERBAUGH #3 (C-588) IND-25136 | GRANT TOWNSHIP | 2.1 | COLUMBIA GAS TRAN |
| 8349110 | 20567 | 3706325480 | 108 | T GREENE #3 (C-632) IND-25480 | GREEN TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349108 | 20565 | 3706325479 | 108 | T GREENE #1 (C-629) IND-25479 | GREEN TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349109 | 20566 | 3706326123 | 108 | T GREENE #2 (C-711) IND-26123 | GREEN TOWNSHIP | 4.4 | COLUMBIA GAS TRAN |
| 8349111 | 20568 | 3706325481 | 108 | T GREENE #4 (C-633) IND-25481 | GREEN TWP | 4.4 | COLUMBIA GAS TRAN |
| -CITIES SERVICE OIL & GAS CORP | | RECEIVED: | 08/11/83 | JA: PA | | | |
| 8349079 | 20484 | 3706320050 | 108 | FRED A MUSSER #1 | PUNXY | 8.3 | PEOPLES NATURAL G |
| -CONSOLIDATED GAS SUPPLY CORPORATION | | RECEIVED: | 08/11/83 | JA: PA | | | |
| 8349067 | 18461 | 3706323884 | 108 | LAYARD GASTON #2 MN-1651 | CANOE | 23.0 | GENERAL SYSTEM PU |
| 8349066 | 18460 | 3706323936 | 108 | LAYARD GASTON #3 MN-1673 | CANOE | 23.0 | GENERAL SYSTEM PU |
| -FOX OIL & GAS INC | | RECEIVED: | 08/11/83 | JA: PA | | | |
| 8349084 | 20530 | 3706327261 | 103 | ROBERT WOLFE #1-A 266 | CHERRYHILL | 25.5 | COLUMBIA GAS TRAN |
| -HAMILTON-RICHARDS | | RECEIVED: | 08/11/83 | JA: PA | | | |
| 8349073 | 20445 | 3700500000 | 108 | BAIR-KIRKLAND #1 | ELDERS RIDGE | 6.2 | PEOPLES NATURAL G |
| 8349075 | 20447 | 3700500105 | 108 | J F BAIR #1 | ELDERS RIDGE | 2.7 | PEOPLES NATURAL G |
| 8349077 | 20443 | 3700500129 | 108 | J F BAIR #2 | ELDERS RIDGE | 6.8 | PEOPLES NATURAL G |
| 8349078 | 20444 | 3700500182 | 108 | J F BAIR #3 | ELDERS RIDGE | 6.8 | PEOPLES NATURAL G |
| 8349072 | 20403 | 3700500045 | 108 | JOSEPH H NEILMAN #2 | ELDERS RIDGE | 3.6 | PEOPLES NATURAL G |
| 8349069 | 20400 | 3700500055 | 108 | PAUL MIMARIK #3 | FREEMONT | 1.6 | PEOPLES NATURAL G |
| 8349074 | 20448 | 3700500051 | 108 | PHILIP RIGGLE ESTATE #1 | ELDERS RIDGE | 3.3 | PEOPLES NATURAL G |
| 8349070 | 20401 | 3700500053 | 108 | ROY A WALKER #1 | FREEMONT | 1.9 | PEOPLES NATURAL G |
| 8349074 | 20446 | 3712920109 | 108 | ROY M WILSON #1 | LATROBE | 8.1 | PEOPLES NATURAL G |
| 8349071 | 20402 | 3700500120 | 108 | S L WILCOX #1 | ELDERS RIDGE | 5.7 | PEOPLES NATURAL G |
| -S T JOINT VENTURE #2-D | | RECEIVED: | 08/11/83 | JA: PA | | | |
| 8349083 | 20502 | 3703321561 | 103 | ZUMSTEIN #2 | BRADY | 25.0 | NATIONAL FUEL GAS |
| -UNION DRILLING INC | | RECEIVED: | 08/11/83 | JA: PA | | | |
| 8349068 | 20371 | 3706327451 | 103 | EDWARD & EDITH SOKOL #4 0748 | CHERRYHILL TOWNSHIP | 8.0 | COLUMBIA GAS TRAN |
| ***** | | | | | | | |
| TEXAS RAILROAD COMMISSION | | | | | | | |
| ***** | | | | | | | |
| -AEGEAN OIL CORP | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349179 | F-03-069014 | 4228731357 | 102-2 103 | KATIE KOCUREK #1 | HOOKER CREEK (NAVARRO) | 36.5 | PHILLIPS PETROLEU |
| -AMERICAN PETROFINA COMPANY OF TEXAS | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349157 | F-03-066923 | 4203931303 | 103 | A B MARSHALL #1 | ALTA LOMA SW (BANFIEL) | 225.0 | TEXAS EASTERN TRA |
| 8349153 | F-02-066421 | 4246931869 | 103 | C Y JACOBS #6 | HELEN GOHLKE (FRIO 35) | 121.0 | TEXAS EASTERN TRA |
| -AMOCO PRODUCTION CO | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349165 | F-02-067609 | 4229733274 | 102-4 | F G KINGERY #1 | WILDCAT | 400.0 | TRANSCONTINENTAL |
| 8349244 | F-08-071028 | 4208333594 | 103 | FRANK COWDEN R/A "D" #26 | COWDEN NORTH | 6.0 | AMOCO PRODUCTION |
| 8349220 | F-08-070437 | 4249531562 | 103 | IDA HENDRICK T-88-GX #9 | HENDERSON | 44.0 | CABOT CORP |
| -ARENA OIL & GAS CO | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349243 | F-04-070982 | 4200730725 | 102-4 | ROUQUETTE #1 | ROCKPORT WEST (FRIO 8) | 164.0 | FLORIDA GAS TRANS |
| -ART MACHIN & ASSOCIATES INC | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349173 | F-06-068379 | 4218300000 | 107-PE | G A BODENHEIM #2 | WILLOW SPRINGS (TRAVI) | 200.0 | WESTERN GAS CORP |
| -AUSTEX ENERGY CO INC | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349155 | F-78-066840 | 4236333070 | 102-4 | CURTIS SLEMMONS #1 (NA) | WILLIE MAE (3RD CONGL) | 500.0 | TEXAS UTILITIES F |
| -B & N PETROLEUM INC | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349199 | F-06-070214 | 4240131642 | 103 | 107-TF OAK HILL GAS UNIT #1 WELL #2 | OAK HILL S (COTTON VA) | 360.0 | TEXAS EASTERN TRA |
| -BANAM CORP | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349192 | F-78-069818 | 4215100000 | 102-4 | BIRDIE CROWDER 2-4 #19526 | SATURDAY EAST (CANYON) | 401.5 | CONOCO INC |
| -BARCO OIL & GAS CO | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349139 | F-78-064756 | 4204931913 | 103 | C P WATKINS #1 | BROWN COUNTY REGULAR | 2.1 | ODESSA NATURAL GA |
| 8349140 | F-78-064757 | 4213331007 | 103 | U Z AARON #1 | EASTLAND COUNTY REGUL | 0.6 | ODESSA NATURAL GA |
| -BEARCO | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349313 | F-78-071186 | 4244732209 | 103 | MARTHA J SHELTON #3A | THROCKMORTON COUNTY R | 0.0 | THROCKMORTON GAS |
| 8349312 | F-78-071185 | 4244732315 | 103 | MARTHA J SHELTON #4A | THROCKMORTON COUNTY R | 0.0 | THROCKMORTON GAS |
| 8349309 | F-78-071182 | 4244732428 | 103 | MARTHA J SHELTON #5A | THROCKMORTON COUNTY R | 0.0 | THROCKMORTON GAS |
| 8349310 | F-78-071183 | 4244732718 | 103 | MARTHA J SHELTON #6A | THROCKMORTON COUNTY R | 0.0 | THROCKMORTON GAS |
| 8349311 | F-78-071184 | 4244732717 | 103 | MARTHA J SHELTON #7A | THROCKMORTON COUNTY R | 0.0 | THROCKMORTON GAS |
| -BOW VALLEY PETROLEUM INC | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349122 | F-03-049054 | 4231330355 | 103 | MARKS #1 | MADISONVILLE SW DEXT | 85.0 | LONE STAR GAS CO |
| -BTA OIL PRODUCERS | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349226 | F-08-070548 | 4217331410 | 102-4 | 8102 JV-F FRY #2 | BLALOCK LAKE SE (WOLF) | 35.5 | PHILLIPS PETROLEU |
| -C F LAWRENCE & ASSOC INC | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349276 | F-7C-071108 | 4210500000 | 103 | TODD "X" #3 | TODD SW (SAN ANDRES L) | 8.0 | APACHE GAS CORP |
| -C H C OIL & GAS CO | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349191 | F-78-069783 | 4213332277 | 102-4 | MASSEEGEE #1 | CHANCELLOR (CONGL UP) | 100.0 | VALERO TRANSMISSI |
| -CAG PETROLEUM CORP | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349130 | F-03-059198 | 4228731265 | 102-2 | COLVIN #2 | GIDDINGS AUSTIN CHALK | 365.0 | PERRY GAS PRODUCT |
| -CASS OIL CO | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349143 | F-7C-065060 | 4243532759 | 103 | 107-TF ALLISON-MIERS #004 | SAMYER (CANYON) | 220.0 | EL PASO NATURAL G |
| -COASTAL OIL & GAS CORP | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349296 | F-8A-071156 | 4216532581 | 103 | 50 HARRIS UNIT 5-7 | HARRIS (GLORIETA) | 3.0 | PHILLIPS PETROLEU |
| 8349261 | F-8A-071063 | 4216532579 | 103 | 50 HARRIS UNIT 5-9 | HARRIS (GLORIETA) | 4.0 | PHILLIPS PETROLEU |

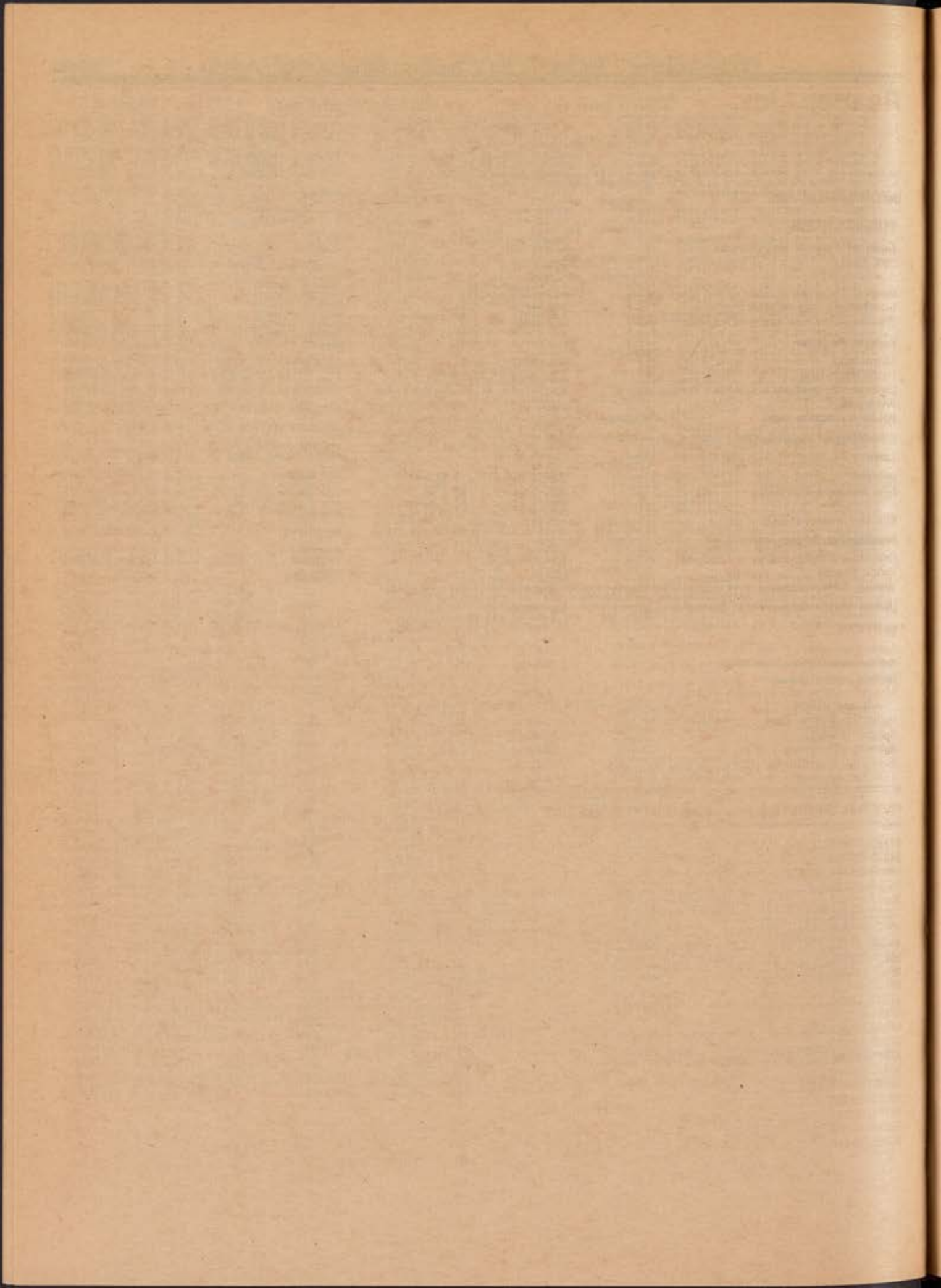
| JD NO | JA DKT | API NO | D SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---------------------------------|-------------|------------|----------|--------|------------------------------------|------------------------|--------|--------------------|
| 8349177 | F-8A-068797 | 4216531542 | 103 | | 50 HARRIS UNIT 6-12 | HARRIS (COLORIETA) | 10.0 | PHILLIPS PETROLEUM |
| COLOGNE PRODUCTION CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349194 | F-02-069839 | 4246931923 | 102-4 | | CLAUDE REEVES #4 | COLOGNE (4460) | 100.0 | HOUSTON PIPELINE |
| CONOCO INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349281 | F-08-071113 | 4238931346 | 102-4 | 103 | CALDWELL ESTATE "4" #1 ID 105773 | SAN MARTINE SW (WOLFC) | 236.7 | |
| CONSERVATIVE OIL & GAS | | | | | RECEIVED: 08/12/83 | | | |
| 8349282 | F-09-071065 | 4250336409 | 103 | | CLARK (SOUTHLAND ROYALTY) #23148 | YOUNG COUNTY REGULAR | 28.0 | J H TAYLOR GAS CO |
| 8349285 | F-09-071068 | 4250336005 | 103 | | CLARK #102800 | THOMAS (CONGL) | 180.0 | J H TAYLOR GAS CO |
| 8349284 | F-09-071067 | 4250330000 | 103 | | KING-CLARK UNIT #21954 | THOMAS (MISS) | 44.0 | J H TAYLOR GAS CO |
| 8349263 | F-09-071066 | 4250335776 | 103 | | KING-CLARK UNIT #22171 | YOUNG COUNTY REGULAR | 82.0 | J H TAYLOR GAS CO |
| CORPUS CHRISTI OIL AND GAS CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349289 | F-02-071132 | 4260330211 | 102-4 | | STATE TRACT 767-5 WELL #1-L | OAKVILLE S W (5100') | 0.0 | HOUSTON PIPELINE |
| 8349290 | F-02-071133 | 4260330211 | 102-4 | | STATE TRACT 767-5 WELL #1-U | OAKVILLE S W (4300') | 0.0 | HOUSTON PIPELINE |
| 8349291 | F-02-071134 | 4260330214 | 102-4 | | STATE TRACT 770-5 WELL #4 | OAKVILLE SW (4300') F | 0.0 | HOUSTON PIPELINE |
| DALLAS PRODUCTION INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349159 | F-78-067126 | 4236333045 | 103 | | CANLEY ESTATE "A" #1 | BELDING (BEHD CONGL) | 113.0 | LIQUID ENERGY CORP |
| DAVID A SCHLACHTER OIL & GAS | | | | | RECEIVED: 08/12/83 | | | |
| 8349195 | F-06-069890 | 4242330635 | 102-4 | | WILLIS JACKSON #2 | CHAPEL HILL (TRAVIS P | 21.9 | ETEXAS PRODUCERS |
| DIAMOND MINERAL INVESTMENTS INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349144 | F-78-065522 | 4204931046 | 103 | | TERRY BEHNIE #1 | JANELLAN (CADD0) | 22.0 | LONE STAR GAS CO |
| DIAMOND SHAMROCK CORPORATION | | | | | RECEIVED: 08/12/83 | | | |
| 8349147 | F-10-066177 | 4242100009 | 100 | | BIVINS ESTATE 1-56 | TEXAS HUGOTON | 0.0 | SOUTHWESTERN PUBL |
| 8349148 | F-10-066179 | 4235700009 | 100 | | CHARLES ELLZEY #1-583 | NORTHROP | 0.0 | SOUTHWESTERN PUBL |
| 8349197 | F-10-070201 | 4221131425 | 100 | | DAVID Q ISAACS SR #4 | CANADIAN SE | 0.0 | NORTHERN NATURAL |
| 8349198 | F-10-070202 | 4242100000 | 100 | | FISHER #1 | TEXAS HUGOTON | 14.0 | NORTHERN NATURAL |
| 8349149 | F-10-066180 | 4235700000 | 100 | | LAWRENCE ELLZEY "E" #1-582 | NORTHROP | 0.0 | SOUTHWESTERN PUBL |
| 8349150 | F-10-066183 | 4229500000 | 100 | | MURPHY "C" #1-626 | LIPSCOMBS | 0.0 | SOUTHWESTERN PUBL |
| 8349158 | F-10-064691 | 4235731271 | 102-4 | | R E WAMBLE ESTATE #2-314 | DUTCHER | 0.0 | |
| DYAD ASSOCIATES | | | | | RECEIVED: 08/12/83 | | | |
| 8349314 | F-7C-071194 | 4243131289 | 103 | | CROWN #2 | JAMESON (STRAWN) | 29.2 | KOCH INDUSTRIES I |
| EL PASO EXPLORATION CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349167 | F-7C-067843 | 4238300000 | 100 | | JALONICK #1-A | SPRABERRY TREND AREA | 11.0 | EL PASO NATURAL G |
| ENERGY-AGRI PRODUCTS INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349264 | F-10-071084 | 4217931220 | 103 | | ANDERSON #3 (ID #05247) | PANHANDLE GRAY | 60.0 | GETTY OIL CO |
| ENSENCH EXPLORATION INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349124 | F-08-051075 | 4222732636 | 103 | | S E LUTHER (FUSSELMAN) 20583 #2603 | S E LUTHER (SIL-DEV) | 50.0 | GETTY OIL CO |
| 8349123 | F-01-050994 | 4201300000 | 103 | | UKBANCZYK UNIT #1 3-LT | FASHING FIELD | 0.0 | NATURAL GAS PIPEL |
| EXCON CORPORATION | | | | | RECEIVED: 08/12/83 | | | |
| 8349165 | F-7C-067862 | 4208131162 | 103 | | I A B UNIT #1914 | I A B (MENIELLE PENN) | 9.0 | SUN GAS CO |
| 8349183 | F-08-069232 | 4200333468 | 103 | | J S MEANS A/C #334 | MEANS SOUTH (WOLFCAMP | 15.0 | PHILLIPS PETROLEUM |
| 8349320 | F-04-071213 | 4204700000 | 100 | | MCGILL BROS 203-T (071154) | KELSEY DEEP (19-A NW) | 0.0 | TRUNKLINE GAS CO |
| 8349225 | F-06-070528 | 4240131637 | 102-4 | | P R GEURIN OIL UNIT #1 #1 | OVERTON ME (PETIT) | 246.0 | ARMCO STEEL CORP |
| 8349241 | F-04-070765 | 4248930604 | 102-4 | | S H BELL "B" 5-F (ID PENDING) | WILLAMAR (GRABEN 5800 | 807.0 | NATURAL GAS PIPEL |
| 8349209 | F-04-070288 | 4226130797 | 102-4 | | SARITA FIELD OIL & GAS UNIT 183-D | SARITA (5-Q SW) | 20.0 | NATURAL GAS PIPEL |
| 8349208 | F-04-070287 | 4226130797 | 102-4 | | SARITA FIELD OIL & GAS UNIT 183-F | SARITA (5-Q SW) | 20.0 | NATURAL GAS PIPEL |
| EZEKIEL ENERGY | | | | | RECEIVED: 08/12/83 | | | |
| 8349322 | F-10-071220 | 4217931315 | 103 | | JANIS #2-4 (ID #05336) | PANHANDLE GRAY | 30.0 | GETTY OIL CO |
| 8349301 | F-10-071173 | 4217931352 | 103 | | JANIS "B" #1-5 (ID #05374) | PANHANDLE GRAY | 40.0 | GETTY OIL CO |
| 8349302 | F-10-071174 | 4217931354 | 103 | | JANIS "B" #2-6 (ID #05374) | PANHANDLE GRAY | 70.0 | GETTY OIL CO |
| 8349304 | F-10-071176 | 4217931375 | 103 | | JARVIS #1-11 (ID #05410) | PANHANDLE GRAY | 40.0 | CABOT PIPELINE CO |
| 8349303 | F-10-071175 | 4217931374 | 103 | | JARVIS #2-12 (ID #05410) | PANHANDLE GRAY | 50.0 | CABOT PIPELINE CO |
| GETTY OIL COMPANY | | | | | RECEIVED: 08/12/83 | | | |
| 8349161 | F-03-067295 | 4208900000 | 103 | | B A JOHNSON "D" #1 | SUBLIME (7360 SAND) | 0.0 | TENNESSEE GAS PIP |
| 8349181 | F-03-067175 | 4205100000 | 102-2 | | M T ELSIK #2 | GIDDINGS (AUSTIN CHAL | 0.0 | FERGUSON CROSSING |
| GHR ENERGY CORP | | | | | RECEIVED: 08/12/83 | | | |
| 8349137 | F-04-064542 | 4250531578 | 102-4 | 107 | TP TREVINO #4 | FRANCISCO (LOBO) | 60.0 | NATURAL GAS PIPEL |
| GRAHAM ENERGY LTD | | | | | RECEIVED: 08/12/83 | | | |
| 8349131 | F-08-061519 | 4235331333 | 103 | | JAMESON D-2 | JAMESON NORTH (STRAWN | 242.6 | SUN OIL CO |
| GULF AMERICAN OIL & GAS CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349172 | F-78-068238 | 4236732439 | 102-4 | | SHUMAKER #1 | BROOK WEST (STRAWN) | 120.0 | TEXAS UTILITIES F |
| GULF OIL CORPORATION | | | | | RECEIVED: 08/12/83 | | | |
| 8349146 | F-10-066001 | 4239330931 | 103 | | B A BYRUM #4-4 | RED DEER CREEK (GRANT | 572.0 | TRANSWESTERN PIPE |
| 8349135 | F-08-063973 | 4238931245 | 107-DP | | NORTHWEST HAMON UNIT #2 | HAMON NORTHWEST (ELLE | 2172.0 | TRANSWESTERN PIPE |
| HLW PETROLEUM CORP | | | | | RECEIVED: 08/12/83 | | | |
| 8349227 | F-78-070588 | 4225332528 | 102-4 | | TINER ZUMHART NO 4-9 | LOS COLINAS (CANYON R | 25.0 | CONOCO INC |
| HOMER PETROLEUM CORPORATION | | | | | RECEIVED: 08/12/83 | | | |
| 8349126 | F-01-056066 | 4212732360 | 102-4 | | H E STUMBER JR #4-L | BLAKEMAN 4600 GAS SAN | 0.0 | VALERO TRANSMISSI |
| HUNT OIL COMPANY | | | | | RECEIVED: 08/12/83 | | | |
| 8349219 | F-08-070403 | 4222733030 | 102-4 | | HARDING IDEN #1 | MOORE (DEEP FSLM) | 4.0 | EL PASO HYDROCARB |
| INDIAN WELLS OIL CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349158 | F-7C-066998 | 4223531732 | 102-2 | | HARRIS 60-3 | PROBANDT (CANYON) | 0.0 | NORTHERN NATURAL |
| INVESTEC INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349133 | F-09-063193 | 4223700000 | 102-4 | | SHELBY 1A | SHELBY (STRAWN) (GAS) | 163.0 | TUFCO |
| JOHN L COX | | | | | RECEIVED: 08/12/83 | | | |
| 8349134 | F-7C-063622 | 4238300000 | 103 | | ROCKER B "R" #14 | SPRABERRY (TA) | 10.0 | EL PASO NATURAL G |
| 8349175 | F-7C-068422 | 4238332500 | 103 | | ROCKER B "R" #15 RRC #05377 | SPRABERRY (T A) | 10.0 | EL PASO NATURAL G |
| JOHNS CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349338 | F-78-071198 | 4205934063 | 102-4 | | WILLIAMS "301" #1 | MASK (CADD0) | 100.0 | DELHI GAS PIPELIN |
| K & M OPERATING CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349186 | F-03-067673 | 4205132416 | 102-2 | | BATES #5 | BIG -A- TAYLOR | 0.0 | CLAJON GAS CO |
| KAARI OIL CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349280 | F-10-071058 | 4206531417 | 103 | | HAIDUK "D" #2-18 (ID #05399) | PANHANDLE CARSON | 50.0 | KERR-MCGEE CORP |
| 8349259 | F-10-071057 | 4206531406 | 103 | | HAIDUK "D" #4-22 (ID #05399) | PANHANDLE CARSON | 40.0 | KERR-MCGEE CORP |
| KENNEDY & MITCHELL INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349185 | F-10-069280 | 4229531080 | 102-4 | | DORSEY #36-510 | COBURN MORROW UPPER | 700.0 | TRANSWESTERN PIPE |
| KEY PRODUCTION COMPANY | | | | | RECEIVED: 08/12/83 | | | |
| 8349182 | F-02-069197 | 4246931959 | 103 | | HEHNIG #1 | COLETTA CREEK SOUTH C | 150.0 | HOUSTON PIPE LINE |
| KILLION WELL SERVICE INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349221 | F-78-070477 | 4242933661 | 102-4 | | LAUDERDALE #1 | WAYLAND (CONGL) | 1800.0 | SOUTHWEST GAS PIP |
| LEGACY PETROLEUM / MCCONATHY | | | | | RECEIVED: 08/12/83 | | | |
| 8349187 | F-06-069336 | 4236531510 | 103 | 107 | TF W B WIENER JR #1 | CARTHAGE (COTTON VALL | 275.0 | UNITED GAS PIPEL |
| MAGNET OIL INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349317 | F-10-071202 | 4206531391 | 103 | | REINHART #2 | PANHANDLE | 0.0 | GETTY OIL CO |
| MEADOWBOURNE OIL COMPANY | | | | | RECEIVED: 08/12/83 | | | |
| 8349154 | F-10-066889 | 4235731320 | 103 | | SMITH #1 RRC # N/A | BULER NORTH (MORROW U | 119.0 | PHILLIPS PETROLEUM |
| MEYER OIL CO INC | | | | | RECEIVED: 08/12/83 | | | |
| 8349300 | F-10-071172 | 4206531283 | 103 | | CRUTCHFIELD #5 | PANHANDLE | 36.0 | GETTY OIL CO |
| 8349299 | F-10-071171 | 4206531282 | 103 | | CRUTCHFIELD #6 | PANHANDLE | 156.0 | GETTY OIL CO |
| 8349298 | F-10-071170 | 4206531292 | 103 | | CRUTCHFIELD #7 | PANHANDLE | 73.0 | GETTY OIL CO |
| MICHEL T HALBOUTH ENERGY CO | | | | | RECEIVED: 08/12/83 | | | |
| 8349223 | F-03-070503 | 4207131415 | 102-4 | | HEC U 5 STEEL #1 | TRI-CITY BEACH | 1.6 | |
| MITCHELL ENERGY CORPORATION | | | | | RECEIVED: 08/12/83 | | | |
| 8349174 | F-03-068399 | 4232100000 | 103 | | C B HARRIMAN #2 | PALACIOS (F-SAND) | 273.4 | FLORIDA GAS TRANS |
| 8349232 | F-78-070663 | 4236732436 | 103 | | JAMES PAUL REED #3 | REND (STRAWN 2900) | 72.8 | |

| JD NO | JA DKT | API NO | D SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
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| 8349321 | F-04-071217 | 4248900000 | 106 | | M B ROBBINS #1 0071620 | LA SAL VIEJA (8 9680- | 0.0 | TENNESSEE GAS PIP |
| 8349163 | F-03-067497 | 4260530145 | 102-4 | 103 | STATE TRACT 234 S #1 | LAFITTES GOLD OFFSHOR | 547.5 | HOUSTON PIPE LINE |
| 8349211 | F-09-070326 | 4249732511 | 103 | | W H PORTWOOD #5 | BOONSVILLE (BEND CONG | 393.0 | NATURAL GAS PIPEL |
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| 8349295 | F-8A-071153 | 4221933790 | 103 | | NORTH CENTRAL LEVELLAND UNIT #383 | LEVELLAND | 2.9 | AMOCO PRODUCTION |
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| 8349141 | F-04-064969 | 4240900000 | 102-4 | | BEUTHAGEL #1 | BEUTHAGEL | 100.0 | SOUTHERN GAS PIPE |
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| 8349180 | F-02-069134 | 4217531726 | 103 | | PEREIRA #4 (DNR NOT ASSIGNED) | DIAL (PETTUS 4240') | 50.0 | UNITED GAS PIPELI |
| -OIL CREEK ENERGY INC | | | RECEIVED: | 08/12/83 | JA: TX | | | |
| 8349213 | F-09-070340 | 4233700000 | 102-4 | | M PATY #1 | OIL CREEK (CADDO LIME | 8.0 | TEXAS UTILITIES |
| -PADRE ENERGY INC | | | RECEIVED: | 08/12/83 | JA: TX | | | |
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| 8349257 | F-10-071044 | 4217931386 | 103 | | WADE "L" #1 (DNR 05383) | PANHANDLE GRAY | 40.0 | CABOT PIPELINE CO |
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| 8349222 | F-02-070479 | 4223931848 | 102-4 | | E CANERDAY #2-T | PALMETTO BEND W (C-5) | 51.0 | LONE STAR GAS CO |
| 8349186 | F-02-069324 | 4223931850 | 102-4 | | FINLEY #1 | PALMETTO BEND W (C-12) | 0.0 | LONE STAR GAS CO |
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| 8349136 | F-78-064163 | 4241734695 | 102-4 | | WALKER-BUCKLER 72 #2 | ROCKWELL (CONGL UPPER) | 250.0 | DELHI GAS PIPELIN |
| 8349196 | F-78-070154 | 4241735120 | 103 | | WALKER-BUCKLER 72 #4 | ROCKWELL (CONGL UPPER) | 35.0 | DELHI GAS PIPELIN |
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| -VENUS OIL COMPANY | | | RECEIVED: | 08/12/83 | JA: TX | | | |
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| -WESLEY SENKEL INC | | | RECEIVED: | 08/12/83 | JA: TX | | | |
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| -WILLIAMS EXPLORATION COMPANY | | | RECEIVED: | 08/12/83 | JA: TX | | | |
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| 8349284 | F-03-071119 | 4219931790 | 103 | | CHOATE BLK 2 LOT 7 #9 | NEW BATSON | 0.0 | MATADOR PIPELINE |
| 8349286 | F-03-071121 | 4219931791 | 103 | | CHOATE BLOCK 2 LOT 7 #7 | NEW BATSON | 3.0 | MATADOR PIPELINE |
| 8349287 | F-03-071122 | 4219931794 | 103 | | CHOATE BLOCK 4 LOT 3 #6 | NEW BATSON | 3.0 | MATADOR PIPELINE |
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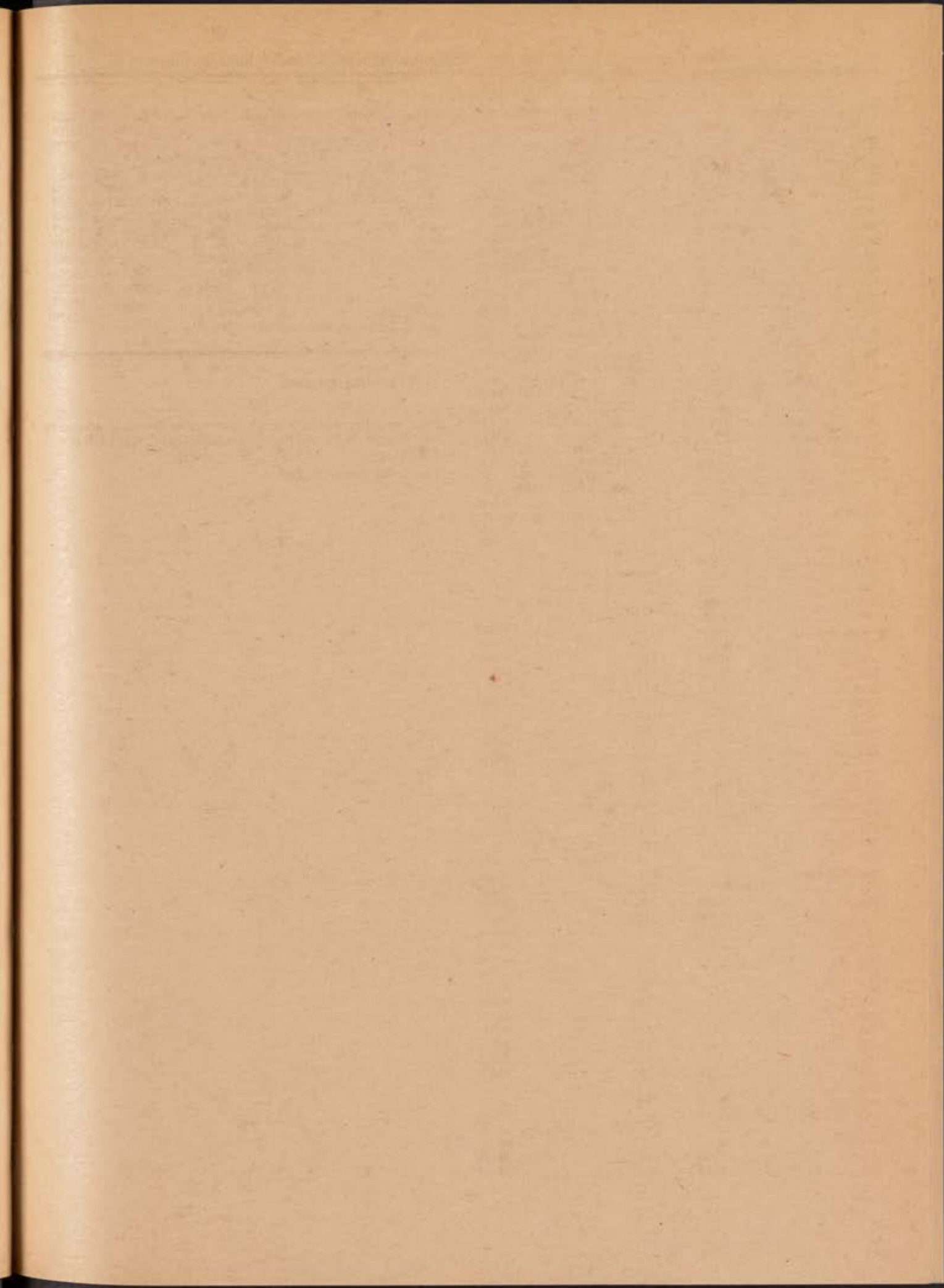
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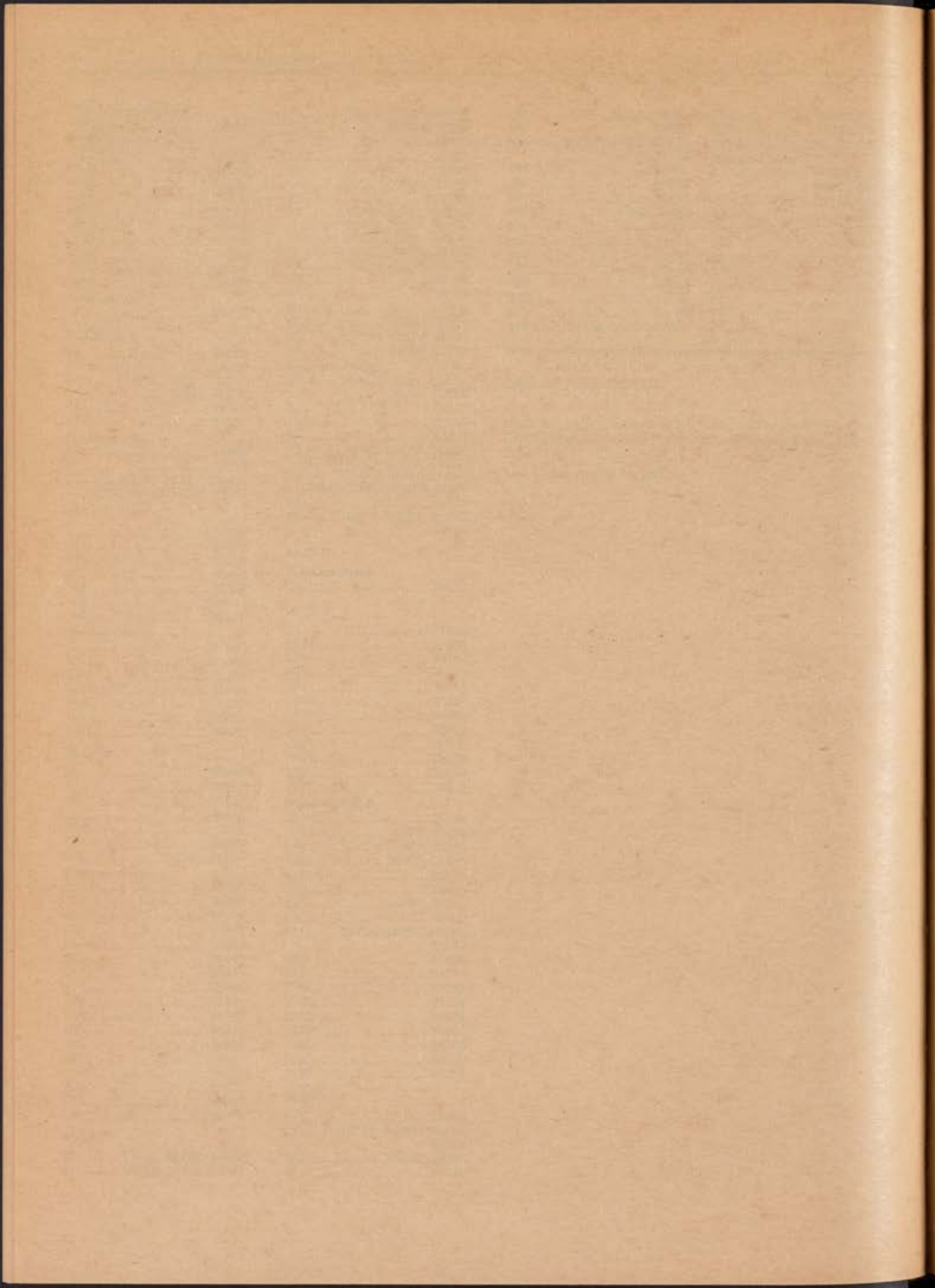
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